

Ombudsman's Determination

Applicant	Mr C
Scheme	The Old British Steel Pension Scheme (the OBSPS)
Respondents	British Steel Pension Fund Trustee Limited (the Trustee); Open Trustees

Outcome

1. I do not uphold Mr C's complaint and no further action is required by the Trustee or Open Trustees.

Complaint summary

2. Mr C has complained about the Early Retirement Factors (**ERFs**) applied to his pension, as he believes that they are unfair and incorrect. He thinks that the Trustee had not acted in the members' best interests and believes that the information that the Trustee provided prior to his retirement was misleading.

Background information, including submissions from the parties

3. The sequence of events is not in dispute, so I have only set out the salient points. I acknowledge there were other exchanges of information between all the parties.
4. Following a bulk transfer from the British Steel Pension Scheme (**the BSPS**) and its entering into a Pension Protection Fund (**PPF**) assessment period, the BSPS changed its name to the OBSPS. Simultaneously, the Trustee was replaced by Open Trustees. The Trustee was the trustee at the time of the actions complained of. Open Trustees, as the current OBSPS trustee, has been included as a respondent.
5. Mr C's complaint was previously considered and was deemed to be materially similar to another case brought by Mr G (**the Group Complaint**). Mr G complained that the Trustee amended the ERFs after he had retired which resulted in higher early retirement pensions. Mr G argued that the change should have been made at an earlier date and so believed that the pension he was receiving was incorrect. He also said that he should have been informed of the prospective changes prior to his retirement.

6. The Pensions Ombudsman determined the Group Complaint on 13 January 2020. The Determination PO-18982 (**the Determination**) explains the reasons why the Group Complaint was not upheld and can be found on The Pensions Ombudsman's Office's (**TPO's Office**) website. Where Mr C's complaint overlaps, those points will not be repeated but reference will be made to the Determination.
7. The majority of the complaints within the group were discontinued following the Determination, on the basis that they were materially similar and so the outcome would be identical.
8. Mr C has said he cannot accept the outcome of the Determination, as he believes his case is substantially different. He wanted to highlight the following:-
 - His benefits were put into payment on 15 September 2016. By this point the Trustee would have known that the ERFs were due to change.
 - He was led to believe that the OBSPS was facing financial difficulties and was likely to be forced into the PPF.
 - The Trustee did not act in his best interests.
 - He said that he should have been given financial advice prior to taking early retirement. He said that all he was required to provide was identification paperwork.
 - Members who transferred out of the OBSPS after May 2017 were given the opportunity to delay their transfers and be paid on an updated preferential basis. He said that this showed that the Trustee was able to give advanced warnings of changes, so should have done the same for him. He also argued that this showed that the Trustee gave some members advice and so should have also done so in his circumstances.
 - He said that when his benefits were paid the OBSPS was still in a deficit. However, after his benefits began to be paid, TSUK paid £550 million into the OBSPS, he said that he should have benefitted from this payment and his benefits should have been adjusted accordingly.
9. Paragraphs 10 to 22 below, provide a brief timeline of events relating to Mr C's complaint.
10. Mr C joined the OBSPS on 1 August 2003.
11. In March 2016, the Tata Steel Group announced that it had begun a portfolio restructuring exercise and it began investigating the possibility of selling Tata Steel UK (**TSUK**). TSUK was the principal sponsoring employer of the OBSPS.
12. 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, and entry into the PPF seemed likely. The

Trustee considered whether a change to the Cash Equivalent Transfer Value (**CETV**) basis was required and took actuarial advice, which confirmed changes were not required at that time.

13. On 26 May 2016, the Trustee issued a press release and a letter (**the May 2016 letter**) to all OBSPS members. The Trustee explained 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 legislation¹ that had come into effect since the OBSPS was established 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.
14. On 31 May 2016, TSUK completed the sale of its Long Products division, where Mr C was employed. As a result, Mr C became a deferred member.
15. On 17 June 2016, the Trustee wrote to Mr C and confirmed his deferred benefit entitlement. The letter confirmed that an early retirement pension statement was available on request from the Pensions Office.
16. On 27 June 2016, Mr C asked for an early retirement pension statement that would be paid upon his 50th birthday (19 July 2016).
17. On 11 July 2016, the Trustee issued an early retirement pension statement. The covering letter, that accompanied it, said:-

“You may wish to seek independent financial advice. Staff at the Pensions Office are not qualified to provide such advice.”
18. On 18 August 2016, Mr C completed paperwork for early retirement benefits.
19. On 31 August 2016, he supplied copies of his passport and utility bill to confirm his identity.
20. On 15 September 2016, payment of his early retirement benefits commenced. As this was prior to his Normal Pension Age, his pension was actuarially reduced to reflect the fact that his pension would be in payment for longer.
21. With effect from 1 April 2017, the Trustee amended OBSPS' ERFs. This had the effect of increasing early retirement benefits for a number of members who retired on or after this date. The background to this decision has been explained in paragraphs

¹ 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.

32 to 58 of the Determination. This is replicated in Appendix One for ease of reference. References to appendices within those paragraphs are references to appendices to the Determination.

22. Mr C raised his complaint with the Trustee on 20 August 2019.

Adjudicator's Opinion

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

- Mr C has said that, by the time his benefits were paid, the Trustee would have known of the potential changes to the ERFs. The Trustee has previously explained that the changes made to the ERFs were a result of the adoption of a revised Statement of Investment Principles (**SIP**). The SIP was only updated in March 2017, which was a significant period after Mr G's benefits were put into payment. So, the Adjudicator did not agree that the Trustee ought to have known of the changes.
- The Trustee's acts and/or omissions in relation to the OBSPS' SIP and ERFs had already been considered in paragraphs 136 to 145 of the Determination (see Appendix Two). The Adjudicator concluded with the following paragraph from the Determination:-

“To conclude the ERFs that are applicable to a member's benefits on their retirement before [Normal Pension Date] are those which are in force at that date of retirement. Factors may change from time to time, to reflect the scheme's circumstances. Mr G retired in 2016, before the change in ERFs. Despite his concerns about fairness, Mr G is not entitled to have his benefits in payment recalculated using post-April 2017 factors because he had already retired before April 2017, when the change in ERFs took effect. If the factors applied from April 2017 had been less advantageous, Mr G would not expect to have his benefits in payment reduced.”
- Like Mr G, Mr C opted to retire early, and the Trustee processed his claim in accordance with the ERFs at that time. So, there can be no maladministration.
- While the Adjudicator had sympathy for Mr C's position, he did not agree that his pension should be re-calculated using the ERFs from 1 April 2017.
- Mr C has argued that he was led to believe that the OBSPS was facing financial difficulties and was likely to be forced into the PPF. He said that he was “panicked” into taking action he otherwise would not have taken. The Adjudicator reviewed the information provided to Mr C prior to his retirement, and said that it had already been considered in paragraphs 96 to 104 of the Determination (see

Appendix Three). The following conclusions can be found in paragraphs 103, 104 and 145 of the Determination:-

“It would have been quite wrong, at that time, for the Trustee to inform members of the potentially future favourable ERFs when its investment strategy had not yet had a chance to bear results and the decision to amend the ERFs had not yet been made.

I find that the announcements, issued prior to and around the time Mr G chose to retire early, were reasonable and I have not found any maladministration on the Trustee’s part in respect of those announcements.

[...]

Amending the ERFs is not an event which requires consultation with members under Section 67 of the Pensions Act 1995, it is reasonable that members were not informed of the forthcoming changes. In Mr G’s case his retirement was prior to the Trustee making the decision to amend the ERFs so it would not have been possible for it to have notified him of a change on which it had not yet made a decision.”

- Mr C has complained that he should have been given more support during his decision to take early retirement. He said he was only required to provide identification but felt it should have been mandatory to show that he had received financial advice. The Adjudicator said that the Trustee did not have a statutory obligation to ensure members had received such advice prior to taking early retirement.
- Furthermore, the Trustee provided a covering letter, alongside his early retirement pension statement, that said he may wish to seek independent financial advice. The letter also said that staff at the “Pensions Office are not qualified to provide such advice.” In the Adjudicator’s view, the Trustee clearly explained that it was Mr C’s responsibility to ensure that he had received financial advice, so he cannot now argue that his decision to retire early had been checked by the Trustee.
- Mr C also complained that the Trustee ought to have increased his benefits in recognition of the £550 million that TSUK paid into the OBSPS as part of the Regulated Apportionment Arrangement. With regard to the relationship between the OBSPS’ funding position and ERFs, the Ombudsman provided his findings on this point in paragraphs 129 to 135 (see Appendix Four) in the Determination. So, the Adjudicator did not consider this further.
- Mr C has also compared his circumstances to members who decided to transfer out of the OBSPS after May 2017. He said that members who had begun the transfer process, but had yet to be paid, at the time the CETV calculation basis changed, were given the opportunity to delay their transfers and be paid on the updated CETV calculation basis. He argued that this showed that the Trustee was

able to give advanced warning of the changes so should have done the same for him. He also argued that this showed the Trustees did advise certain members, so should have done the same for him. The Adjudicator disagreed; Mr C's early retirement benefits were put into payment in September 2016, the ERFs were not altered until over six months later. Consequently, the Trustee would not have known of the changes, so Mr C could not have expected to have been warned.

24. Mr C did not accept the Adjudicator's Opinion and the complaint was passed to me to consider. Mr C provided his further comments which do not change the outcome. He said:-

- The May 2016 letter repeatedly warned that it was likely the OBSPS would move into the PPF, but failed to mention the New BPS.
- In order to provide an option outside of joining the PPF, the Trustees required the Government to alter some legislation. This required a consultation period, that ended on 23 June 2016. However, following the consultation period, the Trustee failed to provide an update, which meant that Mr C was unable to make an informed decision.
- Another member, a union representative, was given a CETV quotation on the original CETV basis. When the CETV calculation basis changed, the Trustee wrote to him and informed him of the changes, it also said it expected this to result in higher CETVs. The member was offered the opportunity to request a further CETV, that was calculated on the new CETV basis. Mr C has argued that, to show consistency, he should have been advised that the ERFs were due to change. Had he received such a warning, he may not have proceeded to retire early. He said that he had been treated differently to the union representative and he felt "victimised".
- Unlike Mr G, the lead Applicant in the Group Complaint, Mr C had not retired. He said that he was still in full time employment, so he only retired because of his concerns regarding the future of the OBSPS.
- It should not have been so easy to access his pension. It was a complicated scheme experiencing difficult circumstances, so he should have been given guidance.
- Some members have been compensated for the advice they received from Independent Financial Advisers (**IFAs**) that encouraged them to transfer out of the OBSPS. Mr C said that his situation did not differ to theirs, so he should also be compensated.

25. I note the additional points raised by Mr C, but agree with the Adjudicator's Opinion.

Ombudsman's decision

26. Mr C has complained about the ERFs that were applied when he retired. His benefits commenced in September 2016 and were paid in accordance with the ERFs that were in force at the time. It is true that the ERFs changed from April 2017 onwards and the change was beneficial for the majority of members whose benefits were paid after this date. However, while I accept Mr C has concerns about fairness, he is not entitled to have his benefits in payment recalculated using post-April 2017 factors because he had already retired in September 2016. If the factors applied from April 2017 had been less advantageous, Mr C would not expect to have his benefits in payment reduced.

27. Mr C has argued that the May 2016 letter failed to inform members of the possibility that there was an alternative to the PPF. He also argued that that the Trustee had failed to update members on whether its request for the Government to change the legislation in relation to the OBSPS had been successful. I have already considered both issues in the Determination. In paragraph 100 I said:-

“The announcements provided by the Trustee, prior to Mr G’s retirement, 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 15 to 17 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.”

28. Looking specifically at Mr C’s argument that the Trustee’s failure to update him on the Government’s consultation caused him to worry about the future of the OBSPS and take benefits early, I disagree. The Trustee may not have provided an update by the time Mr C applied for his benefits. However, there is no evidence that the Trustee indicated that the proposal to modify benefits would be unsuccessful.

29. He also argued that he was led to believe that the OBSPS was facing financial difficulties. He said that this “panicked” him into taking action he would not have otherwise taken. Again, I find that this has previously been considered in the Determination, specifically within paragraphs 96 to 104 (see Appendix Two). My conclusions are found in paragraphs 103, 104 and 145:-

“It would have been quite wrong, at that time, for the Trustee to inform members of the potentially future favourable ERFs when its investment strategy had not yet had a chance to bear results and the decision to amend the ERFs had not yet been made.

I find that the announcements, issued prior to and around the time Mr G chose to retire early, were reasonable and I have not found any maladministration on the Trustee’s part in respect of those announcements.

[...]

Amending the ERFs is not an event which requires consultation with members under Section 67 of the Pensions Act 1995, it is reasonable that members were not informed of the forthcoming changes. In Mr G's case his retirement was prior to the Trustee making the decision to amend the ERFs so it would not have been possible for it to have notified him of a change on which it had not yet made a decision."

30. Mr C has compared his circumstances to another member, who was warned that the CETV calculation basis had changed and that he might want his CETV to be recalculated on the new CETV basis. He argued that this member was treated differently as he was a union representative. He said that, had there been a similar warning to members about the changes in ERFs, he would not have decided to retire early.
31. I do not find that Mr C was treated differently because he was not a union representative. The fact he was not warned of changes was actually a question of timing. Mr C's benefits were paid from September 2016, but the ERFs were not changed until over six months later. So, the Trustee would not have known that ERFs were due to change.
32. Mr C has argued that his circumstances were different that Mr G's, the lead Applicant of the Group Complaint. He said that, unlike Mr G, he had remained working. So, it is clear that he did not need to put his benefits into payment. He said that he was rushed due to his concerns about the financial future of the OBSPS. While I accept their circumstances differ, I do not find that any of the information the Trustee provided regarding the future of the OBSPS amounted to maladministration. My reasons for reaching this conclusion are explained in paragraph 29 above.
33. Mr C has also complained that he should have been given more support during his decision to take early retirement. He said that he was only required identification, but he should have been asked to provide evidence that he had received financial advice.
34. The Trustee did not have a statutory obligation to ensure members had received financial advice prior to taking early retirement. In addition, the Trustee encouraged members to request financial advice prior to taking early retirement. Also included within the early retirement documents was a covering letter that said that staff at the "Pensions Office are not qualified to provide such advice." I find that the Trustee said that it was Mr C's responsibility to ensure that he had received financial advice, so he cannot now argue that the Trustee should have provided financial advice.
35. Mr C has argued that other members who received poor financial advice have had complaints upheld against their advisers. He said that his situation does not differ, so his complaint should also be upheld. Mr C did not receive financial advice, so, his circumstances are different to those members he has referred to. However, I have

PO-20566

investigated the individual merits of his complaint and do not find that any maladministration has occurred.

Anthony Arter

Pensions Ombudsman
15 February 2022

Appendix One

Paragraphs 32 to 58 from Determination PO-18982

(i) “Relationship between ERFs and member contributions to the OBSPS

32. Benefits paid from the OBSPS to members who retire from deferred status are calculated on the basis of the member’s Final Pensionable Earnings and the number of years of his or her Pensionable Service, as set out in Rule 14 of the OBSPS Rules (a relevant extract of which is included in Appendix 1).
33. Employer contribution levels are set by the Trustee after certification from the Actuary (with agreement of the principal employer) in order to provide benefits as they fall due, as set out under Clause 9 of the Trust Deed that governs the OBSPS.
34. Rule 14(1) of the OBSPS Rules specifies that, if a pension is taken “at a time earlier than Normal Pension Age, it shall, where appropriate in the opinion of the Actuary, be reduced”. There are specific circumstances set out in the OBSPS Rules where such a reduction would not apply, for example in situations where the member suffers from incapacity. However, those situations have not applied to Mr G at any material time.
35. Rule 14(1) of the OBSPS Rules also states that “the Trustee must be reasonably satisfied that the value of his benefits is at least equal to the value of the benefits that have accrued to and in respect of him under the Standard Section, taking into account the preservation, revaluation and contracting-out requirements of the 1993 Act.”

(ii) Relationship between ERFs and the OBSPS’ funding position

36. In March 2016, the Actuary considered the application of an underfunding reduction in relation to CETVs. The Actuary determined that such action was not appropriate at the time, as the OBSPS had been more than 100% funded as at 31 March 2014 but recommended regular future review of the matter.
37. In April 2016, the Actuary presented a report, again considering the application of an underfunding reduction based on an initial assessment of the OBSPS’ funding position as at December 2015, which showed that the OBSPS’ funding level might 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.
38. The updated assessment, considered in the Trustee’s May 2016 meeting, showed that the OBSPS’ funding level was more than 100% and there was no need to apply an underfunding reduction to CETVs.
39. The Actuary’s reports of 5 September and 23 November 2016, considered the funding position in relation to CETVs to be over 100% on the existing CETV calculation basis and advised that there was, again, no need to apply an underfunding reduction.

(iii) Relationship between ERFs and the OBSPS' investment strategy

40. Regulation 2 of The Occupational Pension Schemes (Investment) Regulations 2005 (**the Investment Regulations**), (see Appendix 2), 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.
41. 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".
42. 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.
43. 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.
44. 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.

45. The Actuary also advised, in the 9 March 2016 report, that ERFs on retirement from deferred pensioner status should continue to be calculated on the same basis as CETVs, which remained unchanged, as explained in paragraph 42 above.
46. 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.
47. The Actuary's reports, dated 5 September and 23 November 2016, were considered at the September and December Trustee meetings, respectively.
48. 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.
49. 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.
50. 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.
51. 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 (and, consequently, ERF) 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 lesser reduction being applied to members' benefits on early retirement and, subsequently, a higher early retirement pension than had previously been available. 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) CETVs

52. 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.
53. Section 97 of the Pension Schemes Act 1993 (**PSA 1993**), is set out in Appendix 2 below. 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 website².
54. 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.
55. 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.”
56. 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,

² <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.”

57. 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.”

58. 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.”

Appendix Two

Paragraphs 136 to 145 of Determination PO-18982

(iii) Relationship between ERFs and the OBSPS' Investment strategy

136. Mr G has suggested that the changes made to the OBSPS' investment strategy should have been made at a much earlier stage. He also suggests that the decision to invest differently for different classes in the fund (referring in this case to deferred members) is questionable and unfair to all members of the OBSPS. Finally, he suggests that it would make more sense if the ERFs had been reduced before 2017 (thereby increasing his pension), but increased in 2017 due to lower expected returns from the updated investment strategy.
137. As explained in paragraphs 40 and 41 above, it is for the Trustee, with 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.
138. 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, due to the uncertainty surrounding the OBSPS' future, 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.
139. Under Regulation 4(4) of The Occupational Pension Schemes (Investment) Regulations 2005, assets held to cover the actuarially calculated amount required to provide for a scheme's expected liabilities (for example, 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". Therefore, the Trustee is entitled to apportion certain investments or sections of the fund to provide for certain classes of membership. In this case, the Trustee's investment strategy for members who were not yet being paid a pension differed from that in respect of pensioners. Such practice is not uncommon as investments for this section of a

scheme are generally considered long-term, especially when compared to investments intended to relate to pensioners where payments are being made.

140. As the ERFs are calculated to provide the value of a member's pension at the early retirement date, this means that the assumed investment strategy of the assets, allocated to provide the retirement benefit, is relevant to the calculation of the value of a member's pension at a date before NPD. If a high investment return is expected between the early retirement date and NPD, the value of the pension at the early retirement date would be relatively low, as it would be expected to grow with the high investment returns before NPD, and provide the level of benefits the member is entitled to at NPD. If the investment return is expected to be low, a higher value would be required at the early retirement date for the lower investment returns to bring the members benefit up to the level required at NPD.
141. Therefore, if assumed investment returns decrease, as they have in this case, there will be less assumed growth between the early retirement date and NPD, which means that the OBSPS requires more funding at the early retirement date than it did previously, in order to pay the same benefit at NPD. This makes the value of a member's benefits at the early retirement date higher. Therefore, the early retirement factors were amended so that a lower reduction was applied.
142. As explained in paragraphs 40 to 41 above, it is for the Trustee to set the investment strategy and ERFs, 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 and carried out its duties appropriately, in accordance with TPR guidelines.
143. The Trustee asked the Actuary to review the actuarial factors, including the ERFs, due to the OBSPS' updated SIP. The OBSPS Rules require that the Trustee take advice from the Actuary regarding any changes to ERFs. The Trustee has provided evidence that it did so, in the form of a report from the OBSPS Actuary, which was discussed at the Trustee's meeting on 8 March 2017. Section 5 of the actuarial report refers to ERFs and that the "actuarial equivalence" approach would be used, which produces an early retirement pension which is equivalent to the transfer value. That report confirmed that the change to ERFs would be applicable from 1 April 2017; the same date from which the updated CETV basis was effective. Therefore, I am satisfied that the Trustee carried out its obligations correctly in relation to amending the ERFs.
144. To conclude the ERFs that are applicable to a member's benefits on their retirement before NPD are those which are in force at that date of retirement. Factors may change from time to time, to reflect the scheme's circumstances. Mr G retired in 2016, before the change in ERFs. Despite his concerns about fairness, Mr G is not entitled to have his benefits in payment recalculated using post-April 2017 factors because he had already retired before April 2017, when the change in ERFs took effect. If the factors applied from April 2017 had been less advantageous, Mr G would not expect to have his benefits in payment reduced.

145. Amending the ERFs is not an event which requires consultation with members under Section 67 of the Pensions Act 1995, it is reasonable that members were not informed of the forthcoming changes. In Mr G's case his retirement was prior to the Trustee making the decision to amend the ERFs so it would not have been possible for it to have notified him of a change on which it had not yet made a decision.

Appendix Three

Paragraphs 96 to 104 of Determination PO-18982

96. "Mr G and his representative have 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 otherwise have taken, such as retiring early and taking his OBSPS benefits before April 2017.
97. The evidence, (see Appendix 4), 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.
98. 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.
99. Mr G retired, with effect from 2 June 2016, after the change to MVAs were agreed in March 2016, effective from 1 September 2016 (detailed in paragraphs 42 to 43 above), before the Trustee changed the SIP or the ERFs (which, it did later, with effect from 1 April 2017).
100. The announcements provided by the Trustee, prior to Mr G's retirement, 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 15 to 17 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.
101. There was no reference in those announcements to, or promoting, early retirement under the OBSPS. Under the PPF compensation provisions (Schedule 7, PA 2004), PPF compensation depends on the member's age and whether he or she has reached NPD by the scheme's assessment date and is not affected by whether the member is a pensioner or a deferred member as at that date. The 26 May 2016 announcement (and others) merely, correctly and rightly, factually referenced that compensation under the PPF for some members (including those who took early retirement) could be higher (for example, Question 4 of the announcement): see Appendix 4.
102. The information concerning benefits under the PPF, compared with those under the future modified OBSPS, was provided to highlight to members that the majority of them would be better off, if the Government amended legislation to allow the OBSPS to provide modified benefits, or if a second scheme was set up with the same

intention. This would have prevented the OBSPS from entering the PPF. The Trustee correctly looked to encourage members to participate in the Government's public consultation on the matter. Given that the majority of members would have received a higher level of benefit under the modified OBSPS than under the PPF, it seems to me that the Trustee did have the members' financial interests in mind by attempting to engage members in the public consultation in May 2016.

103. It would have been quite wrong, at that time, for the Trustee to inform members of the potentially future favourable ERFs when its investment strategy had not yet had a chance to bear results and the decision to amend the ERFs had not yet been made.
104. I find that the announcements, issued prior to and around the time Mr G chose to retire early, were reasonable and I have not found any maladministration on the Trustee's part in respect of those announcements."

Appendix Four

Paragraphs 129 to 148 of Determination PO-18982

(iv) “Relationship between ERFs and the OBSPS’ funding position

129. Mr G has also said that ERFs should follow the debt calculation of the OBSPS, and that, if this method had been used, the change in factors would not have had a detrimental effect on the OBSPS’ funding position. That statement is also incorrect, as explained in paragraphs 130 to 132 below.
130. ERFs are used to offset the cost to the scheme of a member’s pension on early retirement potentially being paid for a much longer period. This is common practice, to ensure that there is no detrimental effect on, or extra cost to, the scheme. The overall value of benefits, when paid early, must be at least equal to the overall value of the benefits payable at normal retirement date. However, the ERFs are calculated to provide the value of a member’s pension at the early retirement date.
131. A scheme’s funding position does not have a direct impact on the ERFs applied in a final salary scheme or vice versa. The funding position, and/or any deficit, can only be calculated by an actuarial valuation. The Actuary will project future benefit payments earned in respect of pensionable service up to the date of the valuation, and then calculate the value that would be needed immediately to meet all of the projected liabilities (that is, benefit payments). This is usually less than the predicted benefit payments as the scheme’s funds are expected to be invested and increase between the point of valuation and the point the benefits need to be paid. This value is then compared to the actual value of the scheme’s assets at the valuation date and this is what produces the scheme’s funding position.
132. A change in the ERFs or the CETV calculation basis does not alter the value of projected benefits for the purposes of an actuarial valuation. These are still calculated as though they would become payable at NPD. Therefore, the same value would be reached when projecting future benefit payments. A change to the SIP will have a greater impact upon the funding position than a change to the ERFs or the CETV calculation basis. This is because the value that would be needed immediately to meet all of the projected benefit payments, will be calculated using the investment returns the Trustee expects between the date of the valuation and the date at which benefits need to be paid. A change in the SIP, such as occurred in this case, means that more money is needed at the date of the valuation, in order to meet the projected benefits at the date they become payable, due to lower expected investment return between the two dates.
133. The Trustee has demonstrated that it took appropriate advice from the OBSPS Actuary before amending the ERFs. I have found no maladministration in the process that the Trustee followed.
134. For the reasons I have explained in this section (Part B (ii)), I am satisfied that ERFs should not follow the debt calculation or scheme deficit, and the ERFs that have been

implemented by the Trustee have been calculated by the Actuary in accordance with an actuarial industry standard.

135. I see nothing to suggest that the Trustee's method of calculation of ERFs should be drawn into question, or that the Trustee has committed any maladministration in calculating ERFs by that method.

(v) Relationship between ERFs and the OBSPS' Investment strategy

136. Mr G has suggested that the changes made to the OBSPS' investment strategy should have been made at a much earlier stage. He also suggests that the decision to invest differently for different classes in the fund (referring in this case to deferred members) is questionable and unfair to all members of the OBSPS. Finally, he suggests that it would make more sense if the ERFs had been reduced before 2017 (thereby increasing his pension), but increased in 2017 due to lower expected returns from the updated investment strategy.

137. As explained in paragraphs 40 and 41 above, it is for the Trustee, with 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.

138. 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, due to the uncertainty surrounding the OBSPS' future, 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.

139. Under Regulation 4(4) of The Occupational Pension Schemes (Investment) Regulations 2005, assets held to cover the actuarially calculated amount required to provide for a scheme's expected liabilities (for example, 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". Therefore, the Trustee is entitled to apportion certain investments or sections of the fund to provide

for certain classes of membership. In this case, the Trustee's investment strategy for members who were not yet being paid a pension differed from that in respect of pensioners. Such practice is not uncommon as investments for this section of a scheme are generally considered long-term, especially when compared to investments intended to relate to pensioners where payments are being made.

140. As the ERFs are calculated to provide the value of a member's pension at the early retirement date, this means that the assumed investment strategy of the assets, allocated to provide the retirement benefit, is relevant to the calculation of the value of a member's pension at a date before NPD. If a high investment return is expected between the early retirement date and NPD, the value of the pension at the early retirement date would be relatively low, as it would be expected to grow with the high investment returns before NPD, and provide the level of benefits the member is entitled to at NPD. If the investment return is expected to be low, a higher value would be required at the early retirement date for the lower investment returns to bring the members benefit up to the level required at NPD.
141. Therefore, if assumed investment returns decrease, as they have in this case, there will be less assumed growth between the early retirement date and NPD, which means that the OBSPS requires more funding at the early retirement date than it did previously, in order to pay the same benefit at NPD. This makes the value of a member's benefits at the early retirement date higher. Therefore, the ERFs were amended so that a lower reduction was applied.
142. As explained in paragraphs 40 to 41 above, it is for the Trustee to set the investment strategy and ERFs, 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 and carried out its duties appropriately, in accordance with TPR guidelines.
143. The Trustee asked the Actuary to review the actuarial factors, including the ERFs, due to the OBSPS' updated SIP. The OBSPS Rules require that the Trustee take advice from the Actuary regarding any changes to ERFs. The Trustee has provided evidence that it did so, in the form of a report from the OBSPS Actuary, which was discussed at the Trustee's meeting on 8 March 2017. Section 5 of the actuarial report refers to ERFs and that the "actuarial equivalence" approach would be used, which produces an early retirement pension which is equivalent to the transfer value. That report confirmed that the change to ERFs would be applicable from 1 April 2017; the same date from which the updated CETV basis was effective. Therefore, I am satisfied that the Trustee carried out its obligations correctly in relation to amending the ERFs.
144. To conclude the ERFs that are applicable to a member's benefits on their retirement before NPD are those which are in force at that date of retirement. Factors may change from time to time, to reflect the scheme's circumstances. Mr G retired in 2016, before the change in ERFs. Despite his concerns about fairness, Mr G is not entitled to have his benefits in payment recalculated using post-April 2017 factors

because he had already retired before April 2017, when the change in ERFs took effect. If the factors applied from April 2017 had been less advantageous, Mr G would not expect to have his benefits in payment reduced.

145. Amending the ERFs is not an event which requires consultation with members under Section 67 of the Pensions Act 1995, it is reasonable that members were not informed of the forthcoming changes. In Mr G's case his retirement was prior to the Trustee making the decision to amend the ERFs so it would not have been possible for it to have notified him of a change on which it had not yet made a decision."
146. Mr G says that the Trustee owes him a duty to act in his best interests, as stated in *Cowan v Scargill* [1985] Ch D 270, and that the Trustee has failed in this duty because it did not alert Mr G that he would have been better off if he had delayed taking his benefits early. He also points to the asymmetry of knowledge between himself and the Trustee.
147. In *Cowan v Scargill*, Megarry V-C considered the trustees' investment duties. Megarry V-C held that the trustees had a duty to exercise their powers in the best interest of beneficiaries and that the best interests of beneficiaries are usually their financial interests. The trustees must put aside their personal interests and views; they have a duty to diversify investments; must take care in selecting investments; and seek advice on matters it does not understand.
148. I have already found (paragraphs 115 to 117) that there was no obligation to inform Mr G of the change or to re-calculate his pension; but also that the Trustee had met its investment duties properly (see paragraphs 137 to 139). I recognise that the Trustee had a duty when exercising its powers to consider the members' financial interests. But I do not consider that it follows that if the Trustee had alerted members to a potential, but uncertain, future improvement in CETVs and ERFs, it would have discharged that duty. In particular, had the Trustee done so in relation to CETVs, it would have alerted members to the possibility of taking a CETV, with the investment risk potentially shifting to the member on transferring out of the OBSPS which may not be in members' financial interests.