STAYING VIGILANT: LEAKED DOCUMENTS REVEAL NEW RIFT BETWEEN UUK AND USS OVER CONTRIBUTION INCREASES AND THE FUTURE OF THE PENSION SCHEME

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Members of UCU who voted in the April ballot to end industrial action can be forgiven for thinking that the future of their pension scheme is in safe hands. They voted to establish a Joint Expert Panel (JEP) which would seek to improve the methods by which the Universities Superannuation Scheme (USS) is valued, in order to guarantee the longer-term health of the scheme. But there are complications in this process which, as newly leaked documents indicate, could provide our employers with fresh opportunities to compromise the outcome of the JEP and the integrity of USS as a whole.

A confidential Universities UK (UUK) briefing paper circulated to employers on 5 July 2018 by UUK Chief Executive Alistair Jarvis outlines UUK’s current position with regard to USS. Its focus is on temporary, interim changes to USS which will be made while all parties wait to receive and implement the JEP’s first report. But it also contains alarming revelations about UUK’s persistent reluctance to fund USS as a collective, sector-wide Defined Benefit (DB) pension scheme, despite sustained industrial action by staff in defence of that scheme. In short:

- UUK refuses to pay higher contribution rates, even though USS has determined that they can afford to do so
- UUK is deliberating over ‘radical options’ available to employers for exiting and breaking up USS

USS members must stay vigilant, because there are few signs that UUK has abandoned its long-standing goal of transferring as much of the cost and the risk of pension provision onto their employees as possible. Prior to the USS dispute, UUK used a manufactured deficit in USS to represent DB pensions as unaffordable. The JEP arose out of USS members’ growing appreciation that the deficit was, in fact, illusory, and the reforms which it had been used to justify were not needed. But it is not clear that UUK has
changed its own position at all. Its manufactured crisis of affordability—an employer tactic with plenty of historical precedents—lives on, with UUK not only maintaining that small, short-term contribution increases are ‘unaffordable’, but also uttering dire predictions about the longer-term possibility that the whole scheme will disintegrate.

The affordability of short-term increases in employer contributions

Under its current valuation, USS is in deficit. USS has been claiming for months that it is legally obliged to have a plan in place for dealing with that deficit. But the JEP will not make any decisions about the current valuation until September 2018, and the previous plan to recover the deficit by removing the DB element of the scheme was left in tatters after strike action by UCU members. As a result, USS has chosen to trigger a process known as ‘cost-sharing’, although it is better described by the phrase ‘shared contribution increases’. Under Rules 76.4–8 of the scheme, the trustee can require employers and members to increase their contributions to the rate which they deem sufficient.

It is now clear, thanks to leaked briefing materials commissioned by Universities UK (UUK), that USS’s plan is facing strong, stubborn resistance from within UUK. UUK is contesting USS’s claims about what employers can afford by rallying employers to its standard, using the rushed consultation process and leading questions which we already know are its typical modus operandi.

What are these leaked briefing materials? They comprise two documents: a longer briefing paper marked ‘confidential’ and intended strictly for managers at UUK institutions, and a much shorter set of ‘key messages’ intended for dissemination to rank-and-file staff who are USS members in those institutions. They were circulated to managers by UUK Chief Executive Alistair Jarvis, but they appear to have been written on behalf of UUK by KPMG: the named author appears to be a KPMG actuary. The confidential briefing paper outlines and responds to USS’s announcements about its implementation of contribution increases, and opens a consultation with employers about them.

When it became clear that shared contribution increases would need to be implemented while UCU and UUK resolved their dispute, USS commissioned PwC, the accounting firm that played a major role in the USS covenant review and assessment undertaken in 2016, to undertake further work on employers’ ability to increase their contributions. This review engaged directly with a sample of employers covering a third of the scheme’s liabilities, but it also drew on Higher Education Statistics Agency (HESA) data covering ‘approximately 125 employers’ and 95.5% of the deficit.

This review has led USS to the key conclusion that employers can afford to increase their contributions to 21% over the period running from April 2019, when USS intends to impose their plan, to April 2020 (the earliest date by which USS believes a new plan, informed by the JEP’s first report, could be implemented). The whole schedule of
contribution increases, shared between employers and members respectively, is as follows:

- Up to April 2019: 18% and 8%
- April 2019 to October 2019: 19.5% and 8.8%
- October 2019 to April 2020: 22.5% and 10.4%
- April 2020 onwards: 24.9% and 11.7%

Most important is PwC and USS’s determination that employers can pay a rate of 21%, the average USS has required for the 2019–2020 financial year. This is a crucial finding. 21% is higher than:

- The current employer contribution rate of 18%
- The increase to 20.7% which UCU proposed in late February 2018, when the strike forced UUK to return to the negotiating table
- The increase to 19.3% which UUK eventually agreed to offer via the rejected 12 March Acas deal

In other words, UUK, on PwC’s reckoning, can afford an even higher rate than the one which UCU demanded when the industrial action began. The review has also, moreover, led USS to maintain its conviction, established in its 2016 review, that the covenant should be rated as ‘strong’. This conclusion remains opposed to the Pensions Regulator’s suggestion last year that the covenant might instead be rated as ‘tending to strong’.

Given that this finding contradicts employers’ previously established preferred contribution rate, it is not surprising to find that UUK aggressively disputes it. The paper points out that in March 2018, employers told UUK that they could only afford to increase contributions to 19.3%—hence the figure arrived at in its Acas negotiations with UCU. UUK expresses scepticism about PwC’s calculations, stating its concern ‘that this assessment of ability to make higher contributions does not address in detail to recognise [sic] the very difficult decisions employers would have to make when contributions increase to 21%’; and it invites employers to comment on ‘the risks that exist’ in the event that they are forced to meet the 21% increase.

The broader significance of higher contributions

In short, UUK is encouraging its member institutions to push back against USS’s proposed contribution increase. Ostensibly, UUK is just concerned about making the rest of this valuation cycle as smooth and financially painless for employers as it possibly can. But it goes to great lengths to contest PwC and USS’s assessment of the employer covenant and the affordability of increased contributions, in a way that suggests a more pervasive hostility to change. This is not surprising, because the covenant review has clear ramifications beyond the present valuation cycle. It undermines UUK’s well-worn assertions not only about the ‘affordability’ of pensions, but also about the amount which
universities are able to pay their staff more generally. (The latest figures from HESA indicate that the proportion of expenditure on staff has been falling and that of capital expenditure rising.) Because of this, UUK's hostility to a higher contribution rate seems likely to continue well beyond the limited period of contribution increases which USS is currently demanding.

Overall, the confidential briefing paper reveals an entrenched reluctance on UUK's part to spend more on staff. Some of UUK's arguments come in the form of weakly-evidenced pronouncements about what university staff may or may not put up with, as far as their share of the contribution increases is concerned. This is of a piece with UUK and UCEA's 2017 *Suitability and Sustainability: Pensions in the Higher Education Sector*, which sets out a 'long-term direction' for pensions in higher education. UUK declares its concern that higher member contribution rates may cause members to leave or opt out of the scheme. However, whereas UUK has decided to consult employers immediately about their own ability to pay the increased rates, it appears, as before, not to be consulting members or the Union that represents them in order to establish whether its prognosis is correct. Instead, it is inviting their managers to speak on their behalf.

UUK's claim to represent the interests of university staff is only the tip of the iceberg. The briefing paper also marshals arguments as to why employers will struggle to afford the increases required by USS, or face negative consequences for doing so. These arguments are familiar. Employers might have to:

- reduce their staff ‘headcount’
- stop or slow down ‘recruitment’
- further reduce the amount by which they ‘reward’ staff
- reconsider their ‘existing and new capital investment’
- engage in a ‘slowing down of existing business projects’.

Here, beside the strange notion that refusing to pay for staff pensions will allow universities to ‘reward’ staff more generously, we see UUK hinting at its broader agenda of prioritising ‘business projects' and ‘capital investment’ over its workforce. No covenant review is conducted without consideration of factors like these, but the PwC review, like the one carried out in 2016, nonetheless finds that 21% is an affordable rate. The fact that UUK is questioning the latest covenant review so doggedly shows how unwilling it is to let 21% be seen as a normal, financially sustainable level of contribution. UUK's priorities apparently lie elsewhere, and it continues to see university staff and their pensions as liabilities rather than assets.

**Breaking up USS: the legal option**

After rehearsing these familiar claims about the ‘unaffordability’ of increased contributions, UUK's briefing goes on to offer its most radical and potentially inflammatory proposal of all. In a section entitled ‘Consideration of the broader
implications of materially higher contributions’, UUK raises the prospect of an employer-led rebellion that could imperil the scheme as a whole. UUK notes that ‘USS operates on a collective, non-sectionalised basis’ in which ‘employers pay a single, uniform contribution rate to USS regardless of status, and the assets and liabilities are not segregated’. This, in UUK’s view, could cause problems: ‘higher contributions may cause employers to review the terms of their participation, to look seriously at ways to reduce their USS exposure, and potentially look at even more radical options which might bring participation in USS to an end’.

This is not totally unprecedented: UUK have tried once to put an end to the ‘collective, non sectionalised’ element of the scheme, in the autumn of 2017. First, UUK manipulated an employer consultation process by stacking the consultation with responses from Oxbridge colleges in a way that exaggerated the scale of employers’ opposition to the scheme’s proposed investment strategy. Next, they made an offer to UCU that required replacing the Defined Benefit element of the scheme with a Defined Contribution (DC) one. If they had not been thwarted by industrial action, this would have had the same effect which UUK continues to envisage now: namely, releasing employers from their obligation to share equally the investment risks, liabilities, and burdens of contributing to the scheme.

Given that this plan was foiled, what other options are still on the table for the breakup of USS? UUK notes that under the present scheme rules, this would be difficult: an exclusivity clause prevents employers from enrolling staff in other pension schemes, and any institution leaving USS will have to pay a massive ‘Section 75’ debt in order to buy itself out of the scheme. For larger employers, this debt could total billions of pounds. Instead, UUK refers to outcomes so drastic and contentious that it acknowledges an element of ‘risk’ simply in ‘including them in this document’; but, it goes on, ‘the fact is that at least some of the options may legally exist and materially higher contributions may cause employers to pursue options which they would not otherwise consider’. UUK seems to realise that it is airing an extremely provocative and alarming course of action, and it does not spell out what these options could be. But the fact that it goes out of its way to allude to them suggests that it may want employers to start taking them seriously. Indeed, UUK appears more serious about the possibility of the scheme breaking up than it does about finding a way to make Defined Benefit viable. Whereas an entire section is devoted to the possibility of employer exit from USS, the possibility of maintaining a DB element in USS is not mentioned once in the entire briefing paper. Instead, the best it can manage is a typically evasive assurance which again centres on employer affordability: ‘UUK believes that a resolution to the funding challenges of USS is available and will provide longer term contribution requirements for employers which are affordable’.

What happens next?

Where do these revelations leave ordinary USS members? On one level, there is not much they can do to interfere with the private dialogue between UUK and USS. For now, UUK is
restricting its consultation to senior managers in its member institutions, and circumventing ordinary staff while pretending to represent their interests. UUK clearly hopes that managers will share its reluctance to accept USS’s conclusions about the affordability of the 21% contribution rate, and that they will respond to the consultation accordingly. The debacle of September 2017 could happen again, with UUK manipulating and misrepresenting this consultation in order to make it look as though there is a consensus against higher contributions. But there are encouraging signs that history may not repeat itself, thanks to the changing positions of some university managers. Since the strike was announced, a number of Vice Chancellors have become more open to the idea of raising contributions and/or finding other means to guarantee the viability of USS, in particular its DB element. UUK’s briefing paper may not reflect the current consensus among senior management teams. There is an opportunity for employers to take back control of UUK, work constructively towards a proper reassessment of the USS valuation, and put an end to the myopic chicanery that did so much to cause this dispute in the first place.

However, scheme members are not entirely reliant on their managers’ goodwill and sensitivity. The coming months will give them chances to make their own interventions. USS has given them ammunition to use in the battle to show that employers’ ‘capital investment’ and ‘business projects’ need not stop them from paying more. UUK’s time-worn claims about ‘affordability’ have been shown to be ideologically-inflected statements, rather than descriptions of an uncomplicated financial reality: in a telling admission, the briefing paper stresses that the covenant review assesses what employers are able to pay, not ‘what would be preferred’.

This applies just as much to any longer-term reforms proposed by the JEP after it has completed its second phase. The leaked documents give us no reason to believe that slightly higher contributions will be unsustainable in the longer term, but they also give us cause for concern about UUK’s direction of travel. Since before the dispute began, UCU members and other onlookers have argued that the DB element of USS is not intrinsically unaffordable. They hoped that the JEP would be a forum for articulating that opinion and presenting a case for USS to reconsider the flawed valuation methodology that produces artificially inflated deficits. Yet the leaked briefing paper gives no sign that UUK is on board. Far from indicating any commitment to preserving the DB element of the scheme, UUK invites employers to consider legal mechanisms for exiting and undermining it.

It seems likely, moreover, that UUK’s own submissions to the JEP will take a similar approach to this briefing paper. This means that the JEP, in itself, may not be enough. Even if the JEP’s conclusions make it possible to preserve the DB element, it will still be left to the UCU-UUK Joint Negotiating Committee (JNC) to determine the precise benefit/contribution arrangements to adopt. At that point, UUK may refuse to accept the JEP’s findings, especially if they encourage UCU to demand higher employer contributions. If this happens, scheme members may have to strengthen UCU’s hand by returning to the picket lines and insisting that UUK commit to keeping the DB scheme
together. UUK appears to be gearing up for this possibility: it refers to the ‘communication challenge’ which it will face in the autumn in relation to both the JEP report and the cost-sharing process. At that point, it is likely to deploy the arguments against higher contributions which it is attempting to marshal now. Indeed, the first phase of this communications campaign has already begun. The other leaked document, containing ‘key messages’ for USS members, could mislead readers into thinking that USS will not supply specific information about the contribution increases it will require until later this month. This sleight of hand has already been repeated in emails to staff by managers at several universities. Evidently, UUK does not want staff to know about the USS covenant review and its findings before it can muster enough consultation responses to overturn them.

In short, staff may need to launch another round of industrial action to bring UUK round. But they can now do so in the knowledge that employers’ claims about affordability are hollow, and their commitment to maintaining their pension scheme must be measured in actions rather than words.