THE JEP REPORT HAS VINDICATED THE UCU STRIKE, BUT WHERE NEXT FOR THE USS DISPUTE?

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19 September 2018
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This is a USSbrief that belongs to the OpenUPP (Open USS Pension Panel) series.

All page references in main text are to the Report of the Joint Expert Panel (JEP), September 2018.

Some detriment or no detriment?

Is the end in sight for the pensions dispute? On 13 September 2018 the USS Joint Expert Panel (JEP) published its first report on the Universities Superannuation Scheme (USS), dealing with USS’s controversial 2017 valuation. The JEP was established earlier this year by UCU and Universities UK (UUK) after sustained strike action, with each side appointing three panellists and agreeing mutually on an independent chair. UUK and USS had argued for months that the Scheme was seriously in deficit and significant changes to member benefits and/or contributions were unavoidable. UCU and many outside observers argued that the projected deficit either did not exist or was much smaller than USS and UUK claimed.

The JEP’s first report supports almost all of UCU’s claims. Most importantly, it finds that only a modest increase in contributions will be needed to keep member benefits at the same level: to 29.18%, from the current rate of 26% (as the report repeatedly notes, it is a matter for the UCU–UUK Joint Negotiating Committee, not the JEP, to determine how this increase will be split between employers and members: see pp. 7, 43, 60–61, 87). The JEP’s suggested rate of 29.18% is significantly lower than the 36.6% which USS currently claims the Scheme requires. The JEP reached its conclusions by making a small number of modest adjustments to several elements of the valuation, rather than systematically overhauling its methods and assumptions. Its report confirms—without ever saying so explicitly—that the basis on which UCU members took strike action was sound, and their employers were wrong to oppose them. But in spite of this, UCU should also recognise that the report’s formal recommendations are laced with a number of significant concessions to employers and USS. The Panel clearly has the expertise and the desire to
mount an even stronger critique of USS’s valuation methods—and we exhort them to do so in their second report—but it has concentrated instead on providing a quick fix that leaves employers as little scope as possible to complain about its findings.

Familiar arguments

The arguments informing this conclusion are known to many, because UCU and other interested parties have been making them for months. Underpinning them is a broad claim about the unique robustness of the multi-employer ‘covenant’ that sponsors USS (pp. 19–20, 44). Because the pre-92 university sector is a pivotal, high-performing part of the economy, it can take on more risk and assume a longer, more prosperous future than USS and the Pensions Regulator’s (tPR) horizons have allowed. Its projected long-term cash flow and investment returns are healthy and reliable. This means that it does not need to transition to a ‘de-risked’ investment portfolio as abruptly or quickly as UUK and USS have mistakenly claimed.

One of the causes of this error, the JEP notes, has been the haphazard, rushed and dangerously unbalanced way in which UUK and USS have consulted employers. The JEP criticises this aspect of Scheme governance in hard-hitting, albeit diplomatic, terms, charging it with ‘produc[ing] misleading results’ which ‘appear to be inconsistent with many employers’ wishes’ (pp. 9–10). USS built in extra layers of ‘prudence’ which were poorly explained to employers, and then they made further tweaks that inflated the deficit on the basis of an incomplete picture of employers’ preferences (pp. 37, 41, 42, 45–6, 56). These unnecessary detrimental changes to the valuation were compounded by ham-fisted interventions from tPR. The JEP accuses tPR of ‘unduly influencing the outcome of consultations’ (p. 43), while taking an unrealistic, one-size-fits-all approach that is not demanded by its own flexible regulatory code or the underlying legislation (p. 22), and ‘overlooks the unique features of the Scheme [and] the HE sector’ (p. 41).

Punches pulled

However, the JEP has also pulled a lot of punches. Its report is littered with compromises that give the impression of a document designed to secure the agreement of USS and UUK as quickly as possible. The one that will stand out most in the eyes of members who went on strike is the failure to acknowledge the major scandal at the heart of the problematic employer consultation process: the stacking of a September 2017 employer survey with responses from Oxbridge colleges, in a way that significantly misrepresented the scale of employers’ appetite for a low-risk, low-reward funding strategy. Some of these responses appear to have been coordinated in a way that suggests an attempt to break up the Scheme prematurely on the part of the colleges in question and other key figures. Although the JEP takes issue with the way consultation questions are framed and the clarity of the information accompanying them, it is effectively asking members to
forget about the way in which UUK manipulated the process while USS turned a blind eye.

Elsewhere, the JEP compromises by articulating fundamental criticisms of the valuation that are not factored into its headline conclusions and recommendations. If the JEP had pressed harder on some of these fronts, its proposed 29.18% contribution rate would have been even lower. The JEP describes its proposals as a ‘pragmatic way forward’ designed for a ‘swift resolution’ (p. 63): it appears to have decided that there is not enough time to make immediate, far-reaching reforms that bear on the current valuation. This is true of USS’s controversial ‘Test 1’, which the JEP identifies as a potential target for ‘fundamental changes’ in the second phase of its deliberations (p. 53), where it will focus on future valuation cycles. (Indeed, research by Sam Marsh which was submitted to the JEP, but at a date too late for inclusion in the JEP’s first report, indicates that Test 1 may be even more fatally flawed than the report recognises, and not well understood within USS itself.) But in any case, for now the JEP only proposes small adjustments. The same is true of USS’s calculation of employer ‘reliance’ (broadly speaking, the widest allowable gap between Scheme assets and those it would need if it were to invest in a low-risk portfolio: see pp. 29–31). This figure was revised downwards over the course of 2017, with USS suggesting a range of figures from £10–26bn and employers forcing its reduction to the lowest end of £10bn. The JEP proposes restoring reliance to £13bn, while noting that figures in the range of £19–26bn might be more reasonable and consistent with other calculations made by USS (pp. 55–6). The modest reversion from £10bn to £13bn reduced the deficit by around £1.1bn and the contribution rate by 1%, and a change to £19–26bn would produce even more impressive results.

The JEP is equally tentative when it comes to questions of governance reform. As well as ignoring the stacking of the September employer consultation, it makes no specific recommendations that would stop employers from using similarly distorted statistics and leading questions in future surveys. While it correctly recognises that members deserve a comparable role in the consultation process because they share the costs arising from it with employers, the JEP puts the question of how exactly to strengthen member representation to one side. The JEP also glosses over the issue of transparency, an area where USS has continually disappointed its members. While the JEP generally finds USS to be more forthcoming with information than observers anticipated, there are still hints that USS has not been fully cooperative: for example, a major inconsistency in its standard of prudence ‘has not been fully explained by the Trustee’ (p. 37). And yet the JEP’s proposals for improvements in this area are tentative, vague, and do not demand any action from USS (p. 50). Finally, the JEP has done nothing so far to look further back in time and address historic inconsistencies and alleged injustices in the management of USS that may have exacerbated the Scheme’s current position and deserve an explanation: for example, the period of ‘underpayment’ in which employers paid considerably less than their current 18% contribution rate, and were even allowed to drop below the rate which the Scheme’s own actuary deemed necessary to avoid a future deficit. Again, the JEP shied away from a topic about which employers have shown themselves to be very sensitive.
Conclusion

Although its cautious headline conclusions imply that there is still a small deficit in the Scheme, the JEP’s report overall shows that a zero-deficit assessment of USS could easily be reached within the current regulatory framework. In that sense, it not only vindicates but for the most part surpasses positions taken and offers made by UCU during the industrial dispute. It also implicates the actuarial community as a whole, confirming that their dogmatic new valuation regimes do not necessarily have to spell the demise of Defined Benefit (DB) pension schemes. In order to vanquish these bankrupt orthodoxies, however, the JEP’s proposals will have to be taken even further. Members cannot put all their trust in actuarial tweaking or economic contingencies, such as a buoyant stock market, when the Scheme Executive and sponsoring employers still wield so much power, and when the UUK push to undermine the sustainability of DB has been in evidence for a number of years. The governance of USS must be overhauled.

In order to achieve this overhaul, employers will have to be persuaded or forced to do several things: first, to help UCU convince the USS Trustee to adopt the JEP report’s modest recommendations. This should not be difficult. Employers caused the dispute, and the JEP has not asked them to take responsibility, much less compensate members: they should consider themselves lucky to escape with some lightly modified risk parameters and a cheaper valuation. Secondly, and more importantly, UCU must press UUK to create new checks and balances that bolster member representation while limiting the autonomy and influence of the Scheme Executive, the Trustee, and the sponsors. One way to do this might be to convert the JEP itself into a permanent institution operating at arm’s length from USS, employers, tPR and UCU. But such a transformation would also, as Paul Bridgen has warned, need to be accompanied by a much wider and deeper struggle against the financialisation of UK Higher Education as a whole. For now, the crucial thing to remember is that in spite of its many compromises, the JEP’s first report on its own achieves nothing: UCU will need to continue to fight hard for the principles which the JEP has outlined, in both the shorter and the longer term.

The authors are grateful to Sam Marsh for last-minute advice on technical matters.