THE INSIDER

A BRIEF BY USSBRIEFS
DAVID EASTWOOD  WITH BILL GALVIN  JANE HUTTON
USS has fired Professor Jane Hutton — UCU-nominated non-executive director (or Trustee) of USS, highly regarded medical statistician, and USS whistleblower. Hutton joins a long list of those who experience retaliation after they have blown the whistle. The Work and Pensions Select Committee is now probing Hutton’s firing from the USS Trustee Board, and is in communication with The Pensions Regulator (TPR). Meanwhile, just a week before news of Hutton’s dismissal came to light on 11 October 2019, Academics for Pensions Justice reported that a leading pensions law QC, from whom it had sought an opinion, had concluded, having ‘considered all historic and recent actions and behaviour of USS Trustee Ltd and the trustees’, that there are ‘good grounds to take this matter to court based on breach of trust’.

This is the latest crisis to engulf USS, a crisis unfolding as the University and College Union (UCU) is balloting to take a further round of strike action to protect USS as a Defined Benefit (DB) scheme. That UCU has been forced to do so is intimately tied to the events surrounding Hutton: the increased contributions demanded by USS are, Hutton claims, likely to be addressing a deficit that continues to be wrongly calculated (#USSbriefs80). As we head towards what could well be another period of significant disruption and unrest in UK Higher Education, there are grave concerns about how USS is run. Additionally, there are serious questions to be asked about the inaction of both Universities UK (UUK) and TPR in the face of Hutton’s whistle-blowing. We call on all those with the capacity to intervene to do so, with urgency, now.

USS’s act of firing a whistleblower indicates an organisation averse to scrutiny and challenge.[1] Its act adds to long-standing concerns over the governance and decision-making processes of USS — about which much has already been written (e.g. #USSbriefs69). But it also points to an enduring battle that USS continues to wage over
its flawed approach to valuation. The events surrounding Jane Hutton are at the heart of the ongoing dispute over the viability of USS as a DB scheme.

The following account of events surrounding Hutton and USS — covering 2015 to October 2019, and pieced together through the use of public documents, commentaries, and statements [2] — makes it clear why USS would have been so keen to push Hutton out.

2015: Holding USS to account

Jane Hutton was appointed as a UCU-nominated director of USS on 1 November 2015. This came on the heels of Hutton's long-standing efforts to hold USS, Universities UK (UUK), and the Employers Pensions Forum to account for errors and misrepresentations (see #USSbriefs8). These efforts stretched back at least to 2014, and were often conducted with colleagues (including Professor Saul Jacka, member of the Joint Expert Panel [JEP]). Hutton commented, when appointed, ‘I believe my specific expertise in statistical theory and methods, and ethics of statistics will be a valuable perspective to add to the board’. Hutton's UCU branch applauded her nomination, stating that '[Hutton] is relentless in challenging the inaccurate & misleading info peddled by other so-called experts. ... [T]here is no-one better able to hold the other USS Directors to account'.

2017: Struggling to access USS data

Hutton identified various problems with USS's valuation methods in the lead up to the crucial 2017 valuation. In May, she ‘identified a calculation error in [USS’s] “retirement rate”’, which had the effect of inflating pension costs. In July, she ‘expressed serious concerns to the Trustee Board that the assumptions proposed for the valuation would provide misleading estimates’.

UUK rolled out its now notorious consultation on employers’ ‘risk appetite’ in September. Its results buttressed the move to demolish DB pensions (#USSbriefs60; #USSbriefs63). The JEP subsequently criticised the methods and process of this consultation (e.g. pp. 45–46). That same month, Hutton contacted the Financial Conduct Authority (FCA), to make clear that she was not satisfied with the information with which she had been provided by USS to evaluate the discount rate (a key element of any pensions valuation).

In November 2017, USS proposed a revised valuation demanding significantly higher contributions, which sounded the death knell for DB. According to Hutton, that same month, while she was still struggling as a USS director to access data she required, Professor Sir David Eastwood (Chair of the Board of USS), instructed Bill Galvin (Group CEO of USS) to ‘delay dealing with her requests to be provided with data until the panel had a chance to consider the matter’. USS’s own Corporate Governance Framework Policy, updated March 2019, states that directors are expected ‘To constructively challenge, debate intelligently and test recommendations … from committees, the Group
Executive and USSIM [USS Investment Management Limited] and to challenge advisers to ensure sound decisions are made.’) But this is impossible if directors do not have access to the data they need to do so. Hutton complained to Eastwood that ‘it was neither appropriate nor legally compliant for the board of the USS executive to impose restrictions on the information or documents supplied to trustees’.

2018: Involving The Pensions Regulator and Financial Conduct Authority

During the bitterly cold March of 2018, the United Kingdom was full of joyful UCU picket lines making up the longest strike in higher education. The strike successfully pushed back the proposals to do away with DB pensions. That same month Hutton formally raised her concerns over USS with TPR and the FCA. We infer she did so because she was still being stymied by USS. Hutton then waited for a response. Autumn rolled around. September witnessed the publication of the Joint Expert Panel report, which criticised USS, UUK, and TPR. At the end of October 2018, Hutton granted TPR permission to contact USS over her concerns, thereby revealing her identity as a whistleblower. Hutton then waited further for TPR to respond to what she had told them. She waited a whole lot longer. It took over a year for TPR finally to write to USS, in April 2019. What interpretation for such a delay can be offered, beyond foot-dragging?

2019: Incurring the wrath of USS

The criticisms of the JEP in Autumn 2018 stung both USS and UUK (see #USSbriefs82). But as the new year started, and all the focus at USS was on producing a new valuation, USS elected to spurn the logic and the conclusions of the JEP. It invoked the regulator as it did so. In December 2018, at the Institutions’ Meeting, USS had presented itself as bound within certain constraints set out by TPR. It had stated that TPR measures risk using a ‘gilts plus’ figure, and in particular mentioned that TPR used a benchmark of the current rate of interest on long-dated gilts + 1.4% as a ceiling for an acceptable discount rate. Such a claim would serve to prop up USS’s claim that it would not be possible to implement the JEP’s recommendations in full. On 2 January 2019, USS’s 2018 Technical Provisions consultation document framed the gilts plus figure as a measure of risk, referred to a benchmark of gilts + 1.4%, and again presented TPR as an authority (see pp. 13–15).

There was one big problem, however. TPR does not impose a gilts plus benchmarked ceiling on the discount rate. On 8 January 2019, six days after the issue of the consultation document, and as UUK was already consulting its members on it, TPR wrote to USS to tell it that it was wrong. TPR emailed Jeff Rowney (Head of Funding Strategy at USS), copying the email to Eastwood and Galvin (and later to UUK) — stating that it was incorrect that TPR required USS to adopt a gilts plus benchmark. TPR asked USS to ‘consider’ correcting the wording of the consultation document, noting that ‘It is important that [TPR’s] position is not potentially misrepresented’. USS did not correct the wording, and UUK took no action either. Even as TPR’s intervention substantially dented
the integrity of the consultation, the consultation document continued to circulate, with uncorrected errors, among employers.

Not only did USS not respond to the email it had received from TPR; the recipients of the email did not even share it with the other USS directors. The USS executive simply carried on as before. In a webinar in February 2019, over a month after receiving the TPR email (which pointed out that their claim that TPR regards a gilts plus figure as a measure of acceptable risk was incorrect), USS repeated that same incorrect claim — though it chose not to include this in its transcript of the webinar. [3] Through these reiterations of an incorrect claim, the narrative in which USS was unable fully to implement JEP gained further traction amongst employers and scheme members.

But then, in March 2019, TPR published its Annual Funding Statement. That document stated that TPR does ‘not assess the appropriateness of schemes’ TPs or discount rates based on predetermined relationships to gilt yields or other indices’. A big question hung in the air: How long had USS known it had made an error? [4] USS was now under increasing pressure from scheme members, such as Michael Otsuka, who asked awkward questions. Josephine Cumbo, the Financial Times pensions journalist who has followed the USS dispute from the start, emphasised that ‘where [USS] members fully understand the ways in which a pension promise can be measured, they will ask uncomfortable and persistent questions’. Her article, titled ‘USS dispute has exposed a transparency deficit’, appeared on the very same day (6 March 2019) that USS once again displayed a deficit in transparency: it attempted to brush off the suggestion that it had misrepresented TPR’s guidance in its consultation, while making no mention of TPR’s unacted-upon email.

Whatever else this story of USS and Hutton is about, it is also a story about a race against time. The more months that elapsed — as TPR dragged its feet in relation to Hutton’s concerns, and USS sat on its hands — the fewer the possible pathways through which to implement the JEP properly (see #USSbriefs79), and the greater the risk to USS as a sustainable DB pension scheme. The consultation with employers over the 2018 valuation closed on 15 March 2019, just ten days after TPR published its funding statement revealing USS’s error — making it likely that consultation responses were influenced by USS’s preferred narrative.

Hutton’s patience with USS’s intransigence in relation to her concerns and requests for data appears to have run out in May. On 13 May 2019, she emailed certain members of the USS Joint Negotiating Committee (JNC): Sam Marsh (UCU-appointed negotiator), Anthony Odgers (UUK negotiator), and Sir Andrew Cubie the JNC chair. On Marsh’s account, Hutton considered it ‘her fiduciary duty’ as a USS director to inform the JNC of three major concerns she had about the valuation: 1) the USS executive’s inability to provide evidence to support statements attributed to TPR in both Trustee Board and JNC documents; 2) a Trustee Board paper on trigger contributions that Hutton considered contained ‘odd results’; and 3) problematic USS modelling provided to the JNC. [5] Galvin, Marsh reports, reacted quickly. He contacted the recipients of Hutton’s email on the same day, and claimed both that there were ‘misunderstandings’ in it, while
emphasising that it was not a ‘formal communication’ from the Board. From the rapidity of Galvin’s response, we infer that the stakes were now — for all actors — very high.

Now events escalated. At a Board meeting of 16 May 2019, which Hutton subsequently described as a ‘kangaroo court’, Hutton was, as she was to put it, ‘sidelined after claiming that she had been obstructed in her bid to investigate an alleged error in the calculation of [USS’s] much-debated funding shortfall’. Because ‘she felt under “considerable pressure” from the Trustee Board and USS executive’, she had agreed the preceding week ‘to recuse herself from any panel meetings’ after this one. At some point between this Board meeting and 25 June USS suspended Hutton from the Board on grounds of suspected ‘misconduct’.

Meanwhile at some point in May, the January email from TPR, pointing out USS’s error regarding gilts plus benchmarking and asking them to consider correcting it, was — finally — shared with the full Board.

On 21 May 2019, news broke of the whistleblower complaint by Hutton against USS. Hutton was quoted as stating, ‘I suspect the deficit has been substantially overestimated’. On that same day, more evidence came to light that indicated concern from other quarters over USS’s decision-making processes. A leaked confidential letter showed that TPR had taken the ‘extraordinary step’ of writing to USS (on 15 May 2019) over the 2018 valuation proposals — expressing ‘grave’ concerns over Option 3 (a favoured option that had been proposed by USS as a way of settling the valuation) and over USS’s failure to consult with TPR before publishing it, and stating that TPR ‘will be asking to see more about the trustees’ decision making in future’.

UUK responded insouciantly to the events of 21 May 2019. It simply expressed its confidence that ‘the USS Trustee Board is conducting business in line with its fiduciary responsibilities’.

If the news of Hutton’s whistleblowing inflicted substantial damage on USS, then its narrative of diligence, probity, and objectivity was further blown apart on 14 June 2019, when the Financial Times revealed the 8 January email from TPR to USS. This brought into the open not only USS’s withholding of a crucial TPR communication from its own directors, but the lengths to which it appears to be willing to go to shore up its disastrous commitment to de-risking. USS’s older (2017–18) arguments for de-risking had been demolished by the JEP and by various scheme members. Marsh, in the autumn of 2018, for example, had demonstrated using cash flow data which USS had kept confidential for over a year, that such de-risking caused USS to miss out on about £20bn of projected surplus in 20 years’ time (see #USSbriefs58). USS then turned to another narrative to justify de-risking: it argued — we now know, falsely — that TPR’s gilts plus benchmark for evaluating risk prevented USS from delaying its de-risking plans, one of the key recommendations of the JEP (since such a delay would have had the effect of raising the expected rate of return on assets and so the discount rate). [6] USS’s withholding of the 8
January TPR email even from its own directors now appears as part and parcel of sustaining this misleading narrative.

USS, an organisation clearly now under serious pressure, intensified its aggressive strategy. Hutton reported on 25 June 2019 that USS had employed lawyers for an “independent” investigation of [her] alleged breaches of the directors’ conduct’. She added that USS is ‘trying to say that whistle-blowing isn’t allowed’. In early September, she further stated that five legal firms had been engaged by USS. On 11 October 2019, USS fired Hutton using, as evidence, a 250-page report. This report could only be read in a secure room, under observation, with no note-taking allowed, and any disclosure or use of it forbidden.

USS might well believe that by pushing Hutton out it will now be able to carry on down its path, undeterred. That path is one that has been unyielding in the face of the first JEP report, and that has involved stonewalling in response to questions from one of its own directors. But USS’s actions are visible to all. Multiple instances of USS obfuscation, miscommunication, and ideological tunnel vision are threatening the sustainability of the UK’s largest DB pension scheme. Marsh, in a letter he sent on 16 October 2019 to the Work and Pensions Select Committee — which led to its current probing of Hutton’s dismissal from USS, and which we reproduce here (see Appendix below) — is damning in his assessment of USS. In that letter Marsh states that in his role on the JNC, he has witnessed ‘too many cases of selective evidence and questionable use of data … to believe that the executive team is providing neutral, unspun evidence, to those tasked with making decisions’.

**Defending Jane Hutton is inseparable from defending Defined Benefit pensions**

The extraordinary events surrounding Hutton suggest an angrily defensive organisation. USS’s actions appear less like those of a properly managed institution with democratic checks and balances serving the best interests of its beneficiaries, and more like those of an irascible despot. USS appears incapable of accepting criticism or diversity of opinion. It appears to assume it will be indulged in its behaviour thanks to its historical connections with the employers, on the one hand, and TPR, on the other. [7]

But USS is not the only actor under serious scrutiny over this affair: UUK is in the spotlight too. It has stood by as USS engaged in a range of questionable behaviours. It has stood by as Hutton blew the whistle. Its silence means it is culpable for undermining Hutton’s reputation as an esteemed professor and professional. Its response to many of the events reported in this brief makes it hard to countenance that it wishes to defend the DB pension scheme. Meanwhile employers are also now going about diverting a huge, additional sum of money (£0.75bn a year) — money which might have been used for teaching and research (see #USSbriefs80) — to USS in contributions to address a deficit that Hutton argues is very likely to be overestimated.
The strike of 2018 contested misleading calculations, information, and processes which were provided and endorsed by both USS and UUK. It cost employees many millions of pounds, caused the employers to lose a vast amount of good will, and severely damaged trust in both USS and UUK. That good will and trust has certainly not been repaired (see #USSbriefs66). UUK appears to have learned little from those events, even as instances of USS’s alarming manner of making decisions have proliferated.

Meanwhile we should note that those who have closed their ears to Hutton’s concerns, and those silently acquiescing in her dismissal from the Trustee Board, significantly overlap with those who seemed determined to see the end of DB for USS members in 2017–18. They were defeated in 2018 only by strike action. A closer consideration of current practices of governance and regulation seems particularly pressing when one observes that there have been a number of close working relationships between actors and organisations at the heart of the USS dispute. In addition to Galvin’s direct move from TPR to USS, David Eastwood has been connected with USS in a number of capacities since 2007, during part of which time he also held a senior position with UUK; Alistair Jarvis, the current CEO of UUK, was Eastwood’s Director of Communications and Marketing at the University of Birmingham; Professor Adam Tickell, current vice-chancellor of University of Sussex and Chair of the Employers Pensions Forum, and negotiator for UUK in 2018, worked under Eastwood at the University of Birmingham as Provost and Vice-Principal.

Jane Hutton’s bravery has been in the service of protecting the interests of all of us — current and future beneficiaries of USS. She has, like many whistleblowers, suffered for many months already, and will likely suffer for many more. [8] The fight to protect Hutton as a whistleblower is simultaneously a fight to protect USS as a Defined Benefit (DB) scheme. It is a fight we all need to take on.

If you are perturbed by what you have read in this USSbrief, we encourage you to:

- **sign the petition** in solidarity with Jane Hutton.
- **vote**, if you are a member of UCU, in the current ballot (closing 30 October 2019) on USS.
- **read this brief’s appendix**, in which JNC negotiator Sam Marsh writes to the Chair of the Work and Pensions Committee, ‘I urge you to use whatever power you have to investigate what is happening at the scheme’.
- **write to your MP**, calling for a select committee to review the conduct of the USS Executive, directors (Trustees) and TPR in connection with the concerns raised by Jane Hutton. (N.B. A call for an investigation by a select committee was made, by over 1000 academics, in a letter published in the Financial Times in June 2019). [9]
Endnotes for #USSbriefs83

[1] USS claims that the investigation into Hutton’s conduct as a director was ‘completely separate’ from the ‘Board’s investigations into the substance of the whistle-blowing allegations’. We view this claim with scepticism.

[2] This brief draws on a regularly updated timeline by Andrew Chitty, which provides further detail over the events surrounding Jane Hutton.


[4] Two months had passed since TPR’s email to Rowney, Eastwood and Galvin — although that would not be known until the Financial Times broke news of the email on 15 June 2019.

[5] Sam Marsh has stated that this modelling, which he has seen, and from which authoritative conclusions were drawn by USS, did not take into account statistical uncertainty, and that this point has further been conceded by USS.

[6] This paragraph draws on a Twitter thread by Nick Hardy.

[7] Galvin, for example, was Chief Executive of TPR before becoming Group CEO of USS in 2013.

[8] Hutton has stated with regard to her removal from the Trustee Board: ‘I do not accept the validity of either the process or the decision. I will be taking a number of actions to address the process, the decisions, and the accuracy of the assumptions and modeling which underlie the 2017 and 2018 valuations’.

[9] The text of the letter, with signatories, is also available on the website of Professor Danny Dorling, one of the lead signatories.

Appendix: Letter from Dr Sam Marsh, UCU-appointed JNC negotiator, to Frank Field, Chair, Work and Pensions Committee

The letter was published here on 17 October 2019.

See next page.
16 October 2019

Dear Frank,

I am writing with serious concerns over the handling of the case of Prof Jane Hutton, a trustee director of the Universities Superannuation Scheme (USS) who has been removed from her post following an enquiry by the scheme into her conduct. I am writing in a personal capacity, but have been a University and College Union-elected member of the USS Joint Negotiating Committee (JNC) since the summer of 2018.

Prof Hutton’s suspension from the scheme in May followed shortly after an email she wrote to me, Sir Andrew Cubie (chair of the JNC), and Anthony Oggers (Universities UK representative on the JNC). The reaction this email received from USS chief executive Bill Galvin makes me believe he considered it a breach of Prof Hutton’s responsibilities, and may have formed part of the case that assembled against her. There is no way of knowing, as the report into her conduct is kept in a locked room, and has not – and will not – be published.

Prof Hutton’s email, sent on 13 May 2019, contains three occurrences of what she saw as problems in board papers intended to inform decisions on the valuation. She said that she considered it her fiduciary duty to inform the JNC of these matters, and told the board she was doing so. Her email was followed later the same day by one from Mr Galvin to the same recipients attempting to correct what he claimed were “misunderstandings” in Prof Hutton’s email, and that it was not a formal communication from the board.

The three concerns Prof Hutton wanted the JNC to be aware of were the following.

1. The USS executive had been unable to provide evidence to support statements attributed to the Pensions Regulator in board (and JNC) documents.
2. A paper to the board on trigger contributions contained “odd results”: the effect on the volatility of the self-sufficiency deficit by taking a 40-day rolling average had been significantly overstated according to the underlying data.
3. Modelling done by USS for the JNC on year 20 projections had (a) used a 20% contribution rate (as opposed to the 26% rate paid before the 2017 valuation), and (b) drawn firm conclusions using figures at the 99th-centile despite too few trials having been conducted to make them robust.

We now know that the first concern was well-founded: an email from the Pensions Regulator on 8 January 2019, copied to Mr Galvin and Sir David Eastwood (USS chair), had already complained of a
misrepresentation in the documents, but the existence and content of this email had been withheld from the board, despite persistent questioning on the issue by Prof Hutton.

The second concern appears to come down to whether one measures the volatility of daily differences or of the overall dataset, and which one is more relevant to the context. If one looks at the former, one finds a large reduction (because the figure changes slowly from one day to the next). If one looks at the overall dataset, the reduction is much less. Which statistic was the right one to quote depends on the context. As Prof Hutton is a professional statistician, it is likely that her point is well made (that is, that the less appropriate statistic has been used) but I have not seen the papers referred to.

On the third concern, I have seen the paper. There is no clear reason for the use of a 20% contribution rate, which had the effect of inflating projected downside scenarios. The conclusions drawn from modelling – conclusions which were stated authoritatively – did not take into account statistical uncertainty. In fact, the uncertainty in the figures quoted was wider than the gap between them, a point which USS now concedes.

What I have seen in my time on the JNC (of which Prof Hutton’s email is only one part) leads me to have serious doubts over the integrity of those running the scheme. There have been too many cases of selective evidence and questionable use of data for me to believe that the executive team is providing neutral, unspun evidence to those tasked with making decisions. Prof Hutton’s suspension and ultimate dismissal suggests that there is low tolerance for questioning and diversity of opinion on the USS board.

I urge you to use whatever power you have to investigate what is happening at the scheme. The higher education sector is on the verge of serious industrial rest, precipitated in part by the goings-on within USS. I do believe that the internal governance of USS will ultimately be found to have been seriously substandard. The sooner we can move forward with a scheme that its members have faith in, the better for all.

With kind regards,

Yours sincerely,

Dr Sam Marsh
UCU-elected representative on the USS Joint Negotiating Committee

CC:
Charles Counsell, Chief Executive, the Pensions Regulator
Sir Andrew Cubie, Chair of the USS Joint Negotiating Committee
Paul Blomfield, Member of Parliament for Sheffield Central

1 See, for example, Regulator rebukes UK university pension scheme, Josephine Cumbo, 14 June 2019, Financial Times.