

# University of Kent

## Response to the Governance Review of USS Consultation by UUK on the Planned Approach

### Questions on the approach to the review

1. What are your comments on the planned approach to the governance review set out in this paper?

It is critical that this review and its findings has credibility with USS members and representative bodies, if any change arising from this is going to be effective and backed by members. A lot of confidence has been lost in USS over the years and there is a degree of mistrust that needs to be taken into account; full transparency and independence within the review process will be essential. With that in mind, one might question whether UUK, in their role as lead of this review, will be considered to be sufficiently independent or whether the review would be better led by independent professional consultants that provide services for such governance reviews.

Furthermore, whilst it is considered essential to have UCU and USS representation included in the Review Group, there is a concern that, as proposed, this review may be seen primarily as a UUK review (and hence representing employers views more than the members) rather than a true partnership between UUK and UCU working together to improve Scheme governance. The composition of the Review Group will require very careful consideration.

In addition, clarification around the governance and management structure of USS, including the Trustee Board, the Executive, sub committees and subsidiary companies, needs to be presented which clearly identifies the purpose, the roles and responsibilities, the interactions and the relative authority of each party.

2. Are there aspects of the review which need to be included, or removed, or further emphasised?

It is not clear how aspects of the Phase 3 review of the detailed Scheme rules are related to the overall governance of USS. Whilst the areas of exclusivity and covenant support are fundamental aspects of the Scheme and do need exploration and explanation, governance aspects are seen to be more focused on how the Trustees and Board discharge their duties with fairness, transparency and accountability.

There is a concern that including a detailed analysis of Scheme rules within the remit of this governance review will distract from the core governance related issues to be addressed. In addition, their inclusion in this review may lead the work on the rules to be overshadowed by key governance issues and therefore fail to be adequately assessed and reported.

Whilst the findings of the two JEP reviews have been noted as areas which might want to be further explored as part of this review, it seems strange that this is not being used to prioritise the work and focus of this review. A significant amount of work was performed, independently, through the JEP process and this clearly identified shortcomings of both the valuation process and the broader governance within the scheme – given time is now extremely short before planning for the next actuarial valuation takes place, why not use this as the starting point for this review?

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It is recommended that a detail review of Scheme architecture and rules is undertaken as a separate exercise.

The current purpose of USS and objects of the company that acts as Trustee (USS Limited – USSL), are seen as satisfactory, essentially – act as trustee for the benefit of relevant HEI staff. The view is that these need not be changed and thus could be excluded from this review.

The appointment and removal of USSL directors is critical. The review should consider whether the independent directors should be member-elected, or whether the independent directors should be replaced with UCU/UUK appointed directors.

The review should also consider UUK's role in USS governance. It is also not entirely clear how the responses of institutions to UUK consultations get translated into UUK formal responses.

The review should include accountability and oversight of USSIM.

### 3. What skills do you believe are most important in identifying the review Chair, and Review Group members?

As noted above in Q1, rather than set up, resource and manage the Review Group internally, with potential apparent issues around independence, it may be considered beneficial to utilise the services of a professional firm with specific expertise in undertaking governance reviews. This would ensure the independence of the Group and allow the process to be entirely transparent.

If an internal group is required, members should have experience of pension scheme governance, ideally within multi-employer schemes (perhaps drawing from SAUL?), but if not, of defined benefit schemes, and should be supported by experts (professionals) who provide governance review services.

The proposal comments on the composition of the Review Group but delivers no information on how it will achieve its aims. Will the Group have a voting structure? If so, is it proposed that the Chair holds a casting vote? How will the independence of the Group be assured and demonstrated?

The review process needs to be more than simply engaging with UCU; they need to be fully involved. This involvement could be improved by having more than one Chair for the Review Group. It may be fairer and ensure the desired level of cooperation and integration by having both a UUK chair and a UCU chair. Each meeting a Chair could be nominated and act in that capacity for the duration of the meeting.

### 4. Do you agree with the proposed three-phase approach, and the ten segments overall, and/or would you like other phases and segments included? Which areas would be your priority, and which might be addressed earliest?

The reports of the Joint Expert Panel from September 2018 and December 2019 identified a number of governance related concerns. It is surprising that the approach for this review does not prioritise

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a review of the JEP recommendations to determine which remain valid and deserve further consideration.

Phase 2 includes work on the key processes of valuation and consultation. This Phase is due to complete in May 2023. The next actuarial valuation of the Scheme is to take place no later than 2023. If the Phase 2 work is not completed, agreed and actioned prior to the next valuation a key opportunity to influence the process will be lost and the review work devalued. It is recommended that the process review be given more prioritisation within the overall review process.

The work included within Phase 2 is noted as being 'the most significant phase of work for the group' (Page 8 section 2), but the proposed timelines does not allocate any more time to Phase 2 than either of the other phases.

It is very positive to see that Phase 2 is to include 'issues of value and accountability'

Overall, this review needs to deal with issues around valuation, the governance structure that exists in running and overseeing the scheme, from Board level and all sub committees and JNC and provide clear advice and recommendations on how this can be improved.

### Initial questions on USS governance more generally

#### 5. What do you understand by the term governance, and should we specify what is for the purposes this review?

A clear definition and clarification of governance should be included within the Terms of Reference for this Review. The question of what is governance is an important one, particularly as there are elements of the proposed review that would not necessarily fall under our interpretation of governance. For example, should a governance review include consideration of individual scheme rules (such as the issue around exclusivity) – this, in our opinion, extends beyond what we had expected this review to cover.

#### 6. Do you believe there are weaknesses in USS governance, and if you do which do you believe are the problem areas, and why?

The current structure of the JNC is not designed to encourage the group to reach a mutual decision. The casting vote that sits with the Chair is viewed as a key area of weakness that contributes to this problem. There would also appear to be an imbalance in the structure of the Board, with greater representation from employers over members of the scheme.

Furthermore, the lack of transparency around roles and responsibilities of the governing body and committees and the executive, as set out in Q1 above, is a concern and needs to be clarified.

The decision to remove UUK and UCU's right to recall their directors in 2018 should be revisited, as this is perceived to have weakened Scheme governance.

Currently, the only people who have rights as members of USSL are the directors who run the scheme. The review should consider whether membership of USSL should be broadened to include ordinary scheme members and employers, or whether the scheme rules should be amended to give ordinary scheme members or employers the same rights as members of USSL. The directors are

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currently not representative of the scheme membership in terms of gender, age, or ethnicity. Directors from the financial industry are overrepresented, this should be improved.

A number of directors have conflicts of interests as they also act in the capacity of university Vice-Chancellors. This is akin to having CEOs on the board of a pension scheme, which is generally considered to be unwise.

### 7. What would 'better' look like to you in terms of USS governance (please be as specific as possible)?

Clarity and clear boundaries in and between the roles and responsibilities of the Trustee and the Executive, as well as parity and sufficient independence in the membership of core governance committees. Clearly defined valuation processes setting out how and when key decisions are to be made.

Consideration should be given to allowing ordinary members to elect the independent directors or replacing most or all of the independent directors with member and employer-nominated directors.

Membership of USS be expanded to include ordinary members and employers

Restoring the right to recall directors.

Splitting the DB/DC schemes into two entirely separate organisations, with separate governance structures.

A transparent and accountable valuation process, based on clear and credible evidence.

### 8. Which areas of governance are the most contentious in your view, and do the solutions lie in changes to governance terms and/or processes, or is it more that some of the issues are themselves difficult / contentious?

Whilst some of the issues linked to Scheme administration are difficult and contentious, it is the failings of the governance process that have been identified and need to be addressed.

### 9. Which areas of governance have been managed least effectively, or indeed most effectively?

The business conducted through the JNC appears not to be working effectively, not only due to the issue around there being a casting vote, but with regards to a lack in transparency and inconsistent communications with employers as to the issues being considered at the JNC. The tight timescales of consultations is also a problem and concern to us.

### 10. How would a better actuarial valuation process work?

A more open, fully understood and justified approach to risk permitted in the scheme. Improved communications from the JNC to employers and members of the matters being discussed and

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options being explored, with clear indications of how different options impact both on the scheme funding and sustainability as well as on individual members' benefits.

In consultations, sufficient time needs to be provided for proper consideration of matters and it would be helpful if such consultations were transparent on the position of the JNC. In the previous valuation, there was considerable ambiguity around the status of UCU proposals put forward to the JNC which created unnecessary tensions at a local level – open, honest communications of the status of matters being discussed would be helpful.

11. Does the JNC, and the scheme's negotiating machinery more widely, operate effectively – and if not which systems and processes do you believe would operate more effectively?

Timelines on previous consultations have been far too tight in the past and it appears that the USS Trustee reacts to situations rather than planning proper and suitable discourse. This significantly reduces the opportunity for employers and UCU to shape the outcomes.

12. What do you believe would be more effective representation models within the scheme for employers and/or members?

Within the JNC, equal membership of representatives from employers and members, with no one party having a casting vote. Joint (co) chair roles to ensure equity in the conduct of these meetings.

13. Are there any governance risks or other issues which have not been identified in the paper, which you believe the Review Group should be made aware of?

USS Trustees to include delivering 'long term sustainability' and particularly 'affordability' as key responsibilities attached to their role.