

USSEmployers

EMPLOYERS' VIEWS ON THE USS TRUSTEE'S PROPOSED DEBT MONITORING AND PARI-PASSU FRAMEWORK

24 September 2020

INTRODUCTION

From the consultation responses received by Universities UK (UUK), and other exchanges that have taken place, we believe that with modification, a way can be found to implement proportionate arrangements on debt monitoring which employers could support.

We have a series of specific comments on the USS Trustee's proposed arrangements, and consider that the most effective way to progress these individual points is to pick them up directly with the USS specialist covenant team - with the trustee's advisers as appropriate - and on behalf of UUK, the representative group of sector finance specialists. We think that this would help to ensure that the points are fully explained and understood, and continue a constructive dialogue leading to good progress on the further development of the proposed framework.

UUK received responses to the consultation from 107 institutions, which together employ over 84% of the active membership of USS. We are grateful to employers for providing such considered and detailed submissions. We are aware that the USS Trustee will already have access to at least 90 of these responses, as on this occasion we thought it both helpful and appropriate that employers were invited to share their responses directly with the trustee.

SUMMARY OF KEY ISSUES

In summary, the key issues raised by employers through the consultation on the proposed arrangements include:

- The joint working group has worked well, although UUK and the employer representatives were concerned to see the late changes made by the trustee, and/or the USS team, to the proposed framework. This has affected the working group's confidence in the collaborative nature of these discussions, especially as aspects of the proposal moved very specifically in ways which were contrary to positions that might have been more broadly supported. This is something that it would be helpful to address at the outset of reconvening discussions.
- The original proposal was for this framework to only cover higher education institutions, and was designed with those institutions in mind. While the arrangements are proposed to apply to all employers, to date little consideration has been given as to whether the framework, metrics and thresholds would work for USS employers of different size and USS exposure, usually with materially different activities, finances, capital structures and business models. Further consideration of the proposed arrangements, their

proportionality and the resources needed within the trustee and employers to operate it is required, to explore identifying arrangements that provide security for the trustee around events that are likely to be material to the overall covenant of the scheme.

- We recognise that the trustee has expressed, in broad terms, a wish to introduce arrangements such as these for some time, but the proposed details have only been defined very recently. The short length of the consultation period and the proposed implementation date of 1 August 2020 presented a challenging and for many an unacceptably short timeframe for employers. Employers have questioned the rationale for this implementation date given that the consultation itself closed after the proposed implementation date (it closed on 3 August 2020), reiterating a point made by UUK prior to the consultation material being issued. Employers would wish to agree an appropriate future implementation date to a supportable framework, following a thorough consultation process. Adequate time should be included for employers to discuss proposals with their existing lenders, other pension providers and legal advisers, as they deem appropriate.
- Covid-19 is having a significant short-to-medium term impact on the sector, and employers have stressed the importance of approaching the implementation of this framework carefully and with full consideration of all emerging factors - and there are further specific points regarding the potential operation of a debt monitoring framework in this environment which we would like to explain in a little more detail.
- Since the consultation materials were drafted, there have been recent developments including the Corporate Insolvency and Governance Act 2020, the UK government's provision of a university support package of loans and grants for research and knowledge exchange, and the establishment of a higher education restructuring regime in response to Covid-19. It is not clear how and to what extent these developments will impact upon the trustee's proposals; we need to hear urgently from the USS team as to their understanding of these arrangements, and to agree appropriate carve-outs.
- It is an underpinning point from employers that they wish to be able to see the specific, costed benefits that this framework will deliver in the current and future valuations, before they are willing to express definitive support for it (or otherwise). In particular, employers state that it is very important to recognise the significance of putting in place security in favour of USS which is pari-passu to new secured debt, and that employers will not be in a position to confirm their views until the specific effect of the measures (in terms of their impact upon covenant status, and on contribution requirements) is clearly defined and understood in a form which is more specific than is presented in the trustee's technical provisions consultation.

- Employers are concerned at any possible extension, intended or otherwise, of the trustee's power to levy non-uniform employer contributions. The importance of maintaining both the mutual nature of the scheme and the usual approach of setting uniform contributions through the triennial valuation process (with the default 65:35 cost-sharing that is built in to the scheme's rules) has been strongly expressed by employers – and is a point UUK has reiterated to the USS trustee in previous consultations on the schedule of contributions, and on which UUK has previously been assured by the trustee that it has no specific intentions to make modification. In order to avoid difficulty, we would expect the trustee to seek the agreement of employers, through UUK, and in doing so set out specifically how the trustee might see such a power being exercised (which employers consider would be in the most extreme of circumstances and accompanied with significant engagement between the employer concerned and UUK).

CONCLUSION

Employers are clear that the trustee's proposals are significant, and there should be no presumption that the framework will prove to be acceptable and therefore supported by employers. That said, from the responses we have seen and other exchanges, we believe that, with modification, a way can be found to implement proportionate arrangements on debt monitoring which employers could support. The pari-passu elements of the trustee's proposals appear more difficult; the proposals need more work, and then more time for employers to consider.

We would encourage the trustee to reassure employers that the proposed framework has not been introduced with effect from 1 August 2020, and also that the trustee will continue to engage with UUK and the employer specialist group to find potentially acceptable arrangements. In this vein, we believe that it will be appropriate – once the further dialogue with UUK and the employer group has taken place – to undertake further engagement on the proposals, in a follow-up consultation which ideally presents a revised proposition with a more appropriate scope and future implementation date, and which is timed so that employers can see the specific benefit which might be gained from the measures. We think these steps are essential to the trustee gaining the support and engagement of employers with any framework.

The UUK pensions team and employer colleagues are ready to assist in the further development of a possible framework and its communication if that is considered helpful.

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