1. Members contributing to USS

Will striking affect my pension?

In previous one-day strikes it has been the experience of the Association that most university employers do not withhold superannuation contributions and therefore participation in strike action generally does not affect pensions. Also, institutions that do choose to withhold contributions usually make provision for members to make up pension and AVC deficits from their pay.

If your employer does not volunteer any information about the way in which participation in industrial action will affect your pension rights, it will probably not affect them.

If you are making contributions to USS for an employment, absence from that employment may reduce your pension rights if it is not due to your proper exercise of a right to be on leave. It will do so if the employer chooses not to make its contribution to USS in respect of the period of that absence, and hence to effect the suspension of your USS membership for that period. You may take it that your employer has made that choice if it reduces the deduction of USS contribution from your salary to reflect your absence.

In past disputes few employers have threatened suspension of USS membership, and even fewer have effected it, if only because to do so imposes administrative burdens. However, members may wish to know what will happen if suspension occurs.

The amount of almost all USS benefits depends on two elements:

• the member’s pensionable service; and
• his or her pensionable salary.

For every £29,200 of pensionable salary a day’s suspension can be expected to reduce the initial annual pension of a full-time employee who takes the standard lump sum by £1 (1/80 × 1/365 × 29200) and that lump sum by £3: the fraction of 1/365 would apply even if the employer were entitled to deduct a higher fraction of salary from your pay.

What if I am retiring soon?

Your ‘pensionable salary’ will usually be your salary for the 12 consecutive months in the last 36 before you retire (or finally leave active membership of USS) for which the salary was highest in ‘real terms’ (i.e. after enhancement for RPI increases from the end of the 12 months to the end of the 36). Stopping pay because of absence within a period will not for USS purposes reduce ‘salary’ if USS membership is not suspended.

If there is a suspension of your membership, and your best relevant period of 12 months would, with neither industrial action nor an improved pay rise, have been one that in fact
includes time for which your membership is suspended, then the suspension will reduce your pensionable salary by \(1/365\)th for each day of suspension; again, that fraction is not linked to the gross amount actually deducted from pay on account of absence from work. When an improved pay rise results from industrial action and makes your best period one into which the associated period of suspension falls, then that \(1/365\)th will sadly be part of the price paid for the improvement.

However, for a member whose only pay increase in the past year will have been the 3% last August, the ‘best year’ is already over, unless the pattern of movement in the RPI over the next few months is significantly different from the corresponding period in any of the last six years. If, for example, such a member were to retire with 35 years pensionable service, a day’s strike would most probably reduce the rate of benefit by not more than 0.008%; if he or she had only the 20 years of pensionable service, the figure would be 0.014% to three decimal places.

**What if I die on the day of the strike?**

The benefits payable on your death would be unaffected unless the employer not only established that you were ‘absent from employment’ at the time you died, and that your absence was not due to sickness, but had also chosen to suspend membership in such cases and not to make arrangements with USS to extend life cover. It is not considered likely that all of those conditions would be fulfilled in relation to USS members.

If they were, the impact of the suspension would be that the lump sum death benefit would be \(3/80\)ths of your pensionable salary for each year of pensionable service up to death, rather than the usual 3 times current salary; and survivors’ pensions would be calculated on the basis of pensionable service up to death, instead of on the amount of pensionable service you would have had if you had continued in active membership of USS until you were 65.

**What if I have a part-time post?**

If you have a pro rata contract and are not treated as a ‘variable time employee’ for USS purposes (‘VTE’), the proportion of your pensionable service that you would lose by a day’s suspension from USS membership will be smaller than if the contract were for full-time service, because it will be multiplied by your part-time service fraction. However, if you will soon be stopping USS contributions permanently, it will be the full-time equivalent of your salary on which your ‘pensionable salary’ will be based, so any impact on that will be correspondingly magnified.

If you are a VTE, or are treated as one by USS (like OU Associate Lecturers), membership in that capacity will not be suspended. If you have one or more employments, however, for which you pay contributions as a VTE, but also contribute to USS for any employment not in that category, there may be a percentage reduction of the pensionable service accruing over the current year to 31 March for VTE service. It will be equal to the percentage of your pay as a VTE for that year that was lost through the strike. If you are in doubt, assume you are not a VTE if you have a pro rata contract.

**What if I am paying AVCs?**

If you are already making the maximum additional voluntary contributions (‘AVCs’) allowed by USS under the present rules, you could have to pay extra for, or lose, a minuscule part of any additional pensionable service you are buying, if you do not have any appreciable non-pensionable earnings from your USS employer in this tax year, and if that employer gets
around to making a strike deduction from your March salary. However, the maximum contribution is to be substantially raised from 6 April, so this theoretical problem will probably be quickly resolved, if it arises at all.

The strike will not otherwise affect at all either your contribution level or the amount of pensionable service bought, unless you do not finish paying the agreed contributions to buy added service and USS then deduct the strike day in calculating the duration of the payment period.

**What about action short of a strike?**

So long as you remain in employment that is recognised as full-time employment, or as having the same part-time service fraction as it had apart from the industrial action, action short of a strike that does not result in your being ‘absent from employment’ will not affect your pension rights in any way. Your contributions will be affected only if your March pay is reduced so that your pension contributions would have exceeded 15% of your earnings from the relevant employer in the present tax year, a problem that could be resolved.

However, purely for the sake of completeness, we will consider the potential effects of more draconian action by employers which is theoretically possible if extremely unlikely in practice. Such action is likely to be open to legal challenge, apart from its potentially disastrous impact on industrial relations and students.

Your employer might refuse to accept part performance of your contract, leading to a lockout. The effects of that would be pretty well the same as those of our strike. It would clearly be much easier, though, for an employer to establish the ‘absence from employment’ of a member who died during a lockout.

An alternative scenario that some employers appear to be contemplating has them reclassifying your employment as part-time until such time as you agree to work normally, specifying the part-time service fraction that they think appropriate. Local Associations will no doubt secure, through officials, advice as to the legality of this in the particular circumstances. If it had been done lawfully, the effects on your pension would be these.

Contributions other than AVCs would be reduced in the same proportion as your salary, and the pensionable service they would buy during this part-time period would be correspondingly reduced. Lump sum death benefit would also be reduced proportionately at that time, except for members over 65, for whom it would be unaffected, and perhaps for some others whose earnings were already well below their peak. If you died in the period, your survivors’ pensions would be affected because the amount of pensionable service (and notional service) that could accrue by age 65 without further credits or new contracts, would be reduced. Current AVC commitments, and the benefits they would secure, would most probably be unaffected. Of course, some of those adverse effects could be reversed, in due course and at a price, by AVCs or by the increased salaries brought about by the action.
2. Members contributing to statutory teachers’ schemes

The schemes concerned are the Teachers’ Pension Scheme for England and Wales (‘TPS’), the Scottish Teachers’ Superannuation Scheme (‘STSS’) and the Northern Ireland Teachers’ Superannuation Scheme (‘NITSS’). Assume they are all the same, unless they are differentiated below.

Will striking affect my pension?

Yes, but usually very little indeed.

You must expect that your employers will report the day to the managers of the scheme as a day for which you are not in pensionable employment. They do not have the scope for discretion under the regulations that those participating in USS do under that scheme.

The amount of almost all benefits under the teachers’ statutory schemes depends on two elements:

• the member’s effective reckonable service; and
• his or her ‘average salary’, based on earnings close to the end of service.

For every £29,200 of ‘average salary’, a day out of pensionable employment can be expected to reduce the initial annual pension of a full-time employee by £1 (1/80 × 1/365 × 29200) and that lump sum by £3: the fraction of 1/365 would apply even if the employer were entitled to deduct a higher fraction of salary from your pay.

What if I am retiring soon?

Your ‘average salary’ may be reduced as well as your reckonable service. It is your pay for the period of 365 days within the last 3 years for which you contribute to the scheme for which that pay is highest. Days on which you are out of pensionable employment do not count and do not interrupt continuity. Accordingly, if the highest paid 365-day period would have included 7 March 2006 if you had not been on strike, the impact of the service lost by striking may be increased a little.

By way of illustration, a member aged 60 retiring at the end of July 2006 after at least a year at the top of the post-92 Senior Lecturer scale (£37,643 p.a.) with 35 years reckonable service, if 7 March were included, and only that day out of pensionable employment in the year up to retirement, will have a pre-tax reduction of £2.64 in the initial annual rate of his or her pension (just over 0.016%). If one substitutes a Principal Lecturer on £44,947 p.a. but leaves the other assumptions unchanged, the figure would be £3.12 (just under 0.016%). If one reduces the assumed service to 20 years, the figures are £2.04 and £2.52 respectively (both 0.022%, rounded to three decimal places). In each case, the cash reduction in lump sum is three times the figure given for pension.

For the great majority of members, of course, who are not retiring (and not permanently stopping contributions to the scheme for other reasons), the impact will be less than half as great, and there are of course other ways of restoring the benefit lost, even apart from winning additional salary by the action.

What if I die on the day of the strike?

If you die at a time when you are identified as being out of pensionable employment because of a trade dispute, any lump sum death grant that would otherwise have been payable will be
limited to 3/80ths of your ‘average salary’ for each year of your reckonable service. Family benefits would in that event be based on your reckonable service (which may be adjusted in a minority of cases) but would not include the enhancement of up to 10 years payable where a member dies in pensionable employment after a qualifying period of 2 years.

What if I have a part-time post?

The reckonable service you lose will be reduced because it will be multiplied by the fraction that the pay you forgo by striking represents of what it would have been if you had been in the same employment on a full-time contract. If you are close to stopping contributions to the scheme altogether, note that only one earlier day will be brought in to replace the strike day the 365-day period on which your ‘average salary’ is based, even if your fraction of full-time working was then different; but this part-time dimension will not affect your pension because ‘average salary’ is calculated on the basis of full-time equivalent salary.

What if I am paying AVCs?

Additional voluntary contributions (‘AVCs’) through the Prudential, and the money purchase benefits they secure, will be unaffected. If you are buying past added years the payment period you agreed may have to be extended by the time you were out of pensionable employment. If that meant that you did not complete the payments, you could either marginally reduce the service bought or make up the contribution shortfall by a lump sum payment. In practice, such contributions may be deducted as normal; that seems to be the rule for family benefit contributions, e.g. to give a widower or surviving civil partner the potential benefit of your pre-1988 service.

What about action short of a strike?

If your employer lawfully reduced your pay to take account of your refusal to carry out some of the duties of your post, you would not be in pensionable employment for that post, because you would not be entitled to be paid your salary in full. The effect of that, as far as your pension rights are concerned, would be the same as that of our strike. If your employer were to refuse part performance of your contract and effectively lock you out, that too would be the equivalent of a strike in so far as the effects on pension rights and contributions are concerned.

In a further scenario that might just possibly be played out, an employer might vary the contracts of full-time employees who refuse to carry out their duties in full, so as to require them to carry out only the rest of those duties, for a proportion of the previous salary. If that were the case for you, you would be regarded by your pension scheme as in part-time employment. This would be automatically pensionable if you are in STSS or NITSS; but if you are in the TPS for England and Wales, you would need to make (or to have made) an election to Teachers’ Pensions in Darlington on Form 261. If your employer deducted the appropriate contributions from your salary from the outset, the form would normally take effect from the start of this part-time employment; but otherwise the effect might be delayed. See above under ‘What if I have a part-time post?’. An employer might similarly vary the contracts of part-time employees so as to reduce their required hours, and in that case an election to participate would not be required under any of the schemes.