University and College Union

MEMBERS' BRIEFING: JUNE 2011

Defend USS

This is a briefing for UCU members in pre-92 universities involved in the USS dispute. The briefing aims to update you on where we are now, what we have achieved, what remains to be done, why we are still in dispute and how we might end this dispute in a way that protects UCU members.

The decision over whether we take these steps is down to you the member. We hope this briefing helps you to make that decision.

Key points

1. UCU has won many improvements to the original employers proposals.
2. Despite this, the employers have dug in around a set of proposals that would be highly detrimental to new entrants, creating a big tier in the scheme.
3. We think the employers are doing this because they want to create a buffer that will allow them to reduce their own contributions in the future.
4. There is a major risk that if the big tier is allowed to remain, the employers will return in a few years to move those in the final salary onto the lower tier.
5. We have offered to resolve the dispute with a set of our own counter-proposals that would narrow the gap between existing members and new entrants, reducing the risk of a future attack on final salary members.
6. The employers have refused to consider this, relying on the USS board's threat of legal action against our representatives and the chair's casting vote to force their own proposals through the USS JNC.
7. Only a programme of sustained industrial action will now move the employers and offer the chance to settle the USS scheme on a fair and sustainable basis.

1. UCU has won many improvements

UCU has now been engaged in campaigning and negotiating on the USS pension scheme for more than a year. In that time, membership pressure and steadfast negotiating has won a series of significant improvements to the employers' proposals that ensure protection for USS scheme members.

Contribution rate

The employers originally wanted USS members to pay an additional 2% in pension contributions.

UCU successfully won a change that the increase would be limited to 1.15% for existing members, while new entrants would have no increase in their contribution rate of 6.35%.

Benefit structure

The employers originally wanted both existing and new staff to move onto a very inferior career average revalued earnings scheme (CARE). The CARE scheme they proposed would have meant that pension benefits would be calculated on 1/80th of a career average salary. This would have reduced benefits enormously for everyone, including existing members.

UCU opposed this attack on pension benefits and won agreement that all existing members could stay in the existing final salary scheme.

Lump sum in the CARE scheme

The CARE scheme the employers initially proposed would also have meant that any lump sum taken at the point of retirement would reduce the amount of your annual pension.

UCU pressure has moved the employers to accept that any lump sum would be three times the annual pension at the point of retirement with no reduction of annual pension. While we still oppose the package being offered, this is an improvement.

Breaks in employment

The employers originally wanted to remove the right to remain in the final salary from anyone who had a break in employment of six months.

UCU secured a change that scheme members would be protected for 30 months, rather than six. This has won significant protection for thousands of staff on fixed term contracts, those on career breaks and those in periods of redundancies.

Inflation capping

The employers wanted to put an extremely harsh cap on the extent to which your pension could rise with inflation. Inflation will be measured by the lower Consumer Price Index in any case, but the employers also proposed that there would be an extremely harsh cap on how far pensions would rise in line with this index.

The employers' proposed cap would have meant that those who take a deferred pension by leaving the sector or being made redundant would have had rises in their pension in line with inflation capped at 2.5%. It would also have meant that those members in the final salary scheme would have their future pension accrual capped at 5%, rising by 0.5% for every 1% after that up to a maximum of 7.5%. The same sliding scale would apply to all in the CARE scheme.

This meant that your pension would lose value dramatically if inflation rose.

UCU secured a change so that the inflation cap would be lifted and should then apply to all members equally. Now the sliding scale applies to a maximum of 10%, protecting all members for longer against their pensions diminishing in value.

Retirement age

The employers wanted increases in the normal pension age to apply to all.

UCU secured a change so t that those close to retirement (55 and over) can retain their existing retirement age.

In addition, UCU negotiated improvements that allow for flexible retirement without penalising members' pensions.

- The employers have also given up their discretion to cease their contributions at age 65 or after 40 years of service.
- Members over 55 can draw their pensions as a right, with actuarial reductions applied.
- Members will be able to draw up to 75% of their pension and continue to work as long as their work and earnings are reduced by 25% for at least one year. The pension available will be reduced in the case of early retirement and is linked to the member's post (ie it is not transferrable to new employment).

Redundancy

Currently, if a member is made redundant over the age of 55, the employers have to increase their contribution to the pension scheme to ensure that the member does not suffer any actuarial reduction for being forced to stop contributing into the scheme. The employers in effect, make up the difference.

They are determined to offload this responsibility and wanted to do this with immediate effect, we think because it will make it easier for them to restructure the sector more cheaply.

Under pressure, the employers have now said that this will be delayed until 2013, meaning that those targeted for redundancy in the meantime will be protected by the existing scheme rules.

Other improvements

UCU has secured a change so that members who are over 60 and want to rejoin or return to the scheme can do so without paying a higher contribution.

Future costs

The employers wanted any future costs to be shared between the employers and USS members by increasing contributions on a 50/50 basis.

UCU has secured a change so that any increases will be allocated on the basis of 65% by the employers and 35% by scheme members.

In summary, UCU's campaign has created pressure that has enabled our negotiators to win major improvements to the scheme, building in immediate protection for existing members, significant protections and improvements for vulnerable staff on

short-term contracts, career breaks, nearing retirement age or under threat of redundancy. UCU has also negotiated improvements and flexibilities that will improve the USS scheme for many.

UCU members have won these improvements, without which the USS scheme would have been changed to an extent that would have made it unrecognisable, unfair and, we think, unsustainable.

However, we cannot underestimate the problems that remain.

2. The employers have dug in

The employers have dug in around a set of proposals that would be highly detrimental to new entrants, creating a big tier in the scheme. They have also dug in around their proposal to end the right to an unreduced pension on redundancy.

Two big tiers

UCU still opposes the employers' proposals for new entrants. This is not because it is a career average (CARE) scheme. In fact, there are good CARE schemes in existence both in the private sector and in the public sector, such as in the Civil Service. There are also positive aspects to CARE schemes. For example, they prevent the lower paid members having to subsidise Vice Chancellors who enjoy ramped up salaries at the end of their careers.

The key point about the proposals for new entrants is that the particular CARE scheme proposed would entail a dramatically inferior level of pension benefits for new entrants, compared with those in the final salary scheme. This builds an unacceptable two tier benefit structure into the USS scheme.

It is the substance of the level of the pension benefit that is the issue of dispute, not necessarily the form of the scheme.

Reduced pension on redundancy

In addition, we still oppose the employers' insistence on ending the right to an unreduced pension in the event of redundancy after the age of 55.

Although the employers have conceded that this should not be immediate, they are still insisting that this should be implemented from 2013.

3. Why the employers are digging in

The employers have dug in over removing the right to an unreduced pension because they want to make it easier to sack people at a time when the sector is restructuring.

UCU has established that the cost of retaining the current arrangements would be just £28 million. To put this into perspective, this represents 0.19% of total staff costs in the sector.

This is not about the health of the pension fund. It is about cheaper sackings.

The resistance to improving on their poor CARE scheme is based on a financial project to create a buffer in the scheme.

They have made it clear during the talks that they want to insure themselves against the risk of ever having to pay more than 16% contributions. They want to create a 'buffer'. This would be a kind of surplus of income generated by the contributions of employers and members over and above what the actuaries say the scheme currently needs. This buffer would take up the cost of any deterioration of the health of the scheme rather than the employers having to raise their own contributions.

UCU has suggested reforms that would provide for a buffer of 4.15% over and above what the scheme currently needs. But the employers have said no. They are determined to create a buffer of at least 6.55%, which is why they are insisting on their reform package.

Why is this?

UCU believes that as well as capping their future contributions, the employers actually want to reduce their own contribution in the future. As the Employers Pension Forum has said:

> "In the long term it is possible that the employers' proposed changes will produce savings that will enable the employers' contribution rate to be reduced to a more realistic level during the extended period when university finances are likely to be severely constrained. It is impossible to indicate what the likely long terms employer contribution rate might be although we believe that ideally it should be closer to 10% - as envisaged at the time USS was first established – although this will take many years to achieve because of the relatively slow transition to the new CARE scheme."

What it looks like then, is that in addition to making it cheaper to sack staff, the employers may be planning a future pensions holiday at your expense.

You can see from the table overleaf, how the employers scheme creates a 6.55% buffer.

Type of scheme	Employer contribution	Employee contribution	Joint contribution rate	What is needed based on actuarial advice*	Buffer the surplus
Current arrangements (final salary at 1/80ths)	16%	6.35%	22.35%	22.35%	0
Final salary scheme on 1/80ths (with increased contribution for longevity)	16%	7.5%	23.50%	22.35%	1.15%
CARE at 1/80ths (employers' imposed scheme)	16%	6.35%	22.35%	15.7%	6.55%
CARE at 1/65th (UCU's counter-proposals)	16%	7.5%	23.35%	19.2%	4.15%

* based on 2008 valuation which is likely to change as a result of the 2011 valuation. The surplus/buffer indicated is likely to be a conservative figure based on actuarial assumptions.

4. The tier is too big – the risk is too great

UCU has won protection for existing members. But we have continued to campaign and negotiate to win improvements to the CARE scheme on offer for new entrants. This is not just because it is fair and right to do so. It's also pragmatic for existing members.

As we said above, UCU does not object to CARE on principal. The key to a good CARE scheme is the accrual rate. The accrual rate for the employers' CARE scheme is very poor. The result is that there is a massive gap between the pension benefits of new entrants and existing members.

This is bad news for new entrants, obviously, but it is also bad news for existing members. The gap creates a major financial incentive for the employers to come back and force members onto the poor CARE scheme for all future service.

And if they did do this, existing members would struggle to mobilise support from new entrants who were already in the CARE scheme. The employers would have divided and would rule.

This is not scaremongering.

According to the National Association of Pension Funds, last year, a record number of final salary pension schemes were closed to both new entrants and existing members (17%), while 33% of schemes reported that they were planning changes around existing members including cutting benefits or migrating staff onto inferior pensions.

According to the NAPF, this marks a new phase in the decline of final salary (defined benefit) pensions, as schemes that have already closed to new joiners now look to make restrictions on existing members. (http://www.napf.co.uk/PressCentre/Press_releases/0090_Staff_shut_out_of_their_final_salary_pensions_at_record_rate.aspx)

5. Our attempt to narrow the gap

UCU has consistently sought a negotiated solution. We have made proposal after proposal to reach an agreement, in spite of the employers' propaganda to the contrary.

Most recently, we tabled a set of counter proposals to the USS JNC which were designed to close the gap between the benefits available under the current final salary scheme and any new CARE scheme.

- Our proposals were also designed to meet the call to de-risk the scheme.
- Enable the creation of a buffer to take into account any changes that might be thought necessary after the 2011 valuation.
- Massively improve the position of new entrants.
- Help protect the final salary benefits of existing members.

Negotiators tabled these proposals on the basis that any agreed package would have to be referred to members.

You can see how our proposals would have narrowed the gap from the tables below. Each one is a case study which shows the stark difference between the employers' CARE proposals and our own CARE proposals. It also shows how our proposals would massively improve the position for new entrants.

Were we to win these improvements, we would not only create a fairer system, with a smaller tier, but we would reduce the inter-generational tension in the scheme, improve the prospects of solidarity if further attacks on final salary were made and we would reduce the overall incentive for the employers to come back for more.

CASE STUDIES

1. Lecturer: aged 30, on spine point 37 and continued to work until age 65

	Pension p/a	Lump sum	Total expected benefits	Difference between protected final salary and CARE schemes
Current provision	34,100	102,300	993,000	
Existing members under 55 Protected final salary (EPF proposals)	32,600	97,800	949,000	
New entrants EPF proposals (CARE 1/90th)	24,400	73,200	710,000	239,000
UCU Counter proposals CARE 1/65th)	31, 500	94,500	917,000	32,000

2. Lecturer: aged 30, promoted to senior lecturer after 10 years

	Pension p/a	Lump sum	Total expected benefits	Difference between protected final salary and CARE schemes
Current provision	39,500	118,500	1,150,000	
Existing members under 55 Protected final salary (EPF proposals)	37,800	113,400	1,100,000	
New entrants EPF proposals (CARE 1/90th)	27,100	81,300	789,000	311,000
UCU Counter proposals CARE 1/65th)	35,100	105,300	1,022,000	78,000

3. Researcher: aged 25, on point 37 on pay spine, leaving after 12 years

	Pension p/a	Lump sum	Total expected benefits	Difference between protected final salary and CARE schemes
Current provision	7,900	23,700	232,000	
Existing members under 55 Protected final salary (EPF proposals)	7,800	23,400	229,000	
New entrants EPF proposals (CARE 1/90th)	6,800	20,400	199,000	30,000
UCU Counter proposals CARE 1/65th)	8,500	25,500	249,000	+20,000

6. The employers refuse to move and railroad through their proposals

Throughout the process of negotiation and consultation, the employers have been obdurate in insisting on their reform package. Only membership pressure applied at each phase has enabled our negotiators to win concessions.

In July 2010, the employers were able to get their proposals through the USS JNC by making use of the independent chair Sir Andrew Cubie's casting vote. This was unprecedented and it meant that an unagreed package of reforms was being imposed on the scheme membership. It also allowed the USS board to start a formal consultation.

UCU exposed the partial and limited nature of the consultation, as well as its derisory return rate and we held our own consultation, which demonstrated that the employers' proposals commanded no legitimacy among scheme members.

Throughout this time and then again during our ballot for industrial action and during the strike action, we called for talks at ACAS to resolve the dispute.

We called for talks at ACAS because we had little confidence that the USS JNC would be anything other than a rubber stamping exercise.

For the same reason, the employers hoped that UCU's representatives would attend a formal JNC in March 2011.

Our negotiators resisted pressure to attend and denied the JNC the quorum necessary to get the unagreed reforms through. At the same time, we repeated our offer to meet the employers outside the USS JNC. They refused.

What then happened was perhaps predictable but still extraordinary. USS, the second biggest pension fund in the UK, threatened legal action against UCU's negotiators, five ordinary UCU members.

The employers meanwhile, hid behind the USS bullying tactics and waited to see whether they would force our representatives into the JNC, as they hoped.

As you would expect, UCU took specialist legal advice for the negotiators. The advice indicated that unless the negotiators attended the next meeting of the JNC, they would be personally liable for costs and damages of an unspecified amount but that would certainly entail individual bankruptcy. The advice also indicated that USS could ask the courts to suspend the need for a JNC to get the reforms implemented.

Faced with this advice, the UCU negotiators attended the JNC under duress, made the case for further dialogue and for our counter-proposals, but to no avail.

As expected, Sir Andrew Cubie, voted with the employers.

7. Next steps – we can still make a difference

The dispute is not over. We should be clear: we have won major improvements throughout the campaign so far. However, the Higher Education

Committee is also clear that these improvements are not enough.

There are real risks to existing members and our future members face an appalling drop in benefits.

It is still possible to reach an agreement with the employers that could be approved by the JNC.

But it is clear from our experience so far that the employers will only be moved by moving into a new gear. One-day strikes will not do the job.

Instead, the negotiators and the Higher Education Committee believe that members should be re-balloted to give the union a mandate for a new programme of action. This would be a sustained programme of disruptive industrial action, including strikes and action short of a strike. The aim would be to cause the maximum disruption to the universities' ability to function.

We have to be entirely open about what this means.

Members do not like taking action that disrupts universities or affects students. But this is what it will take to safeguard your pension and win improvements for new members.

Because we have to be open, a re-ballot would specify both the forms of action short of a strike and strike action that we would propose taking and the risks to members.

Industrial action would include not just action short of a strike but action involving external examiners and action targeted at key university dates.

This could be coupled with actions designed to cause administrative chaos and with demonstrative action.

We hope this briefing shows that UCU has done everything possible to avoid reaching this point.

But the unpleasant truth is that we face employers who are ready to exploit legal threats and bullying to impose inferior pensions on new entrants; who may look to reduce their own contributions into USS at your expense, who want to make it cheaper to sack you and your colleagues and who may before long look to use the inequity in their proposals to come back for your final salary scheme.

Your negotiators and the higher education committee of the NEC are clear: only a serious, sober but determined response in the form of sustained disruptive industrial action can prevent this from happening.

It is up to members to decide on the union's next steps.