

Negotiators brief on salary sacrifice/exchange in USS Pension scheme

USS and salary sacrifice

USS, after agreement with UCU, has altered its regulations to allow the pension scheme to be used as a salary sacrifice option. This means that it is possible for employees to agree with their employer to lower their salary by the amount they would have paid in contributions into USS, and for the employer to pay the individual's pension contribution direct to USS.

This has the effect of generating savings for the employee and the employer from national insurance, but the employer loses some of their savings by having to pay the employee's pension contributions.

UCU has agreed with USS regulations to ensure that the employer reports the full service salary and pays the contributions at that level, not the earnings of the individual. This prevents any loss to the individual within the scheme. Furthermore for the purposes of mortgages etc the full service salary will be recorded.

USS is working with Prudential to see if it is possible to include monthly Additional Voluntary Contributions' (AVC) payment within the scope of the salary sacrifice. It is anticipated that this facility might be available after summer 2008.

Employers and consultants

USS employers who have made, or are considering, this move have normally worked with consultants to ensure that they manage the process and information correctly. USS is also monitoring their data to ensure that the institution does report everything correctly to the pension scheme.

The main consultants working in this area have devised schemes like PensionPlus, PensionSmart, Smarter Pensions and Paysave to name a few.

All of these schemes are built around a model which requires a change of contract to ensure that staff are automatically in the scheme unless they opt out. This is to maximise the returns for the employer and make the necessary administration changes worthwhile.

UCU's position

UCU has agreed the changes to USS rules to enable this to be offered to the sector. However, as it is a contractual change, it is important that branches/local association negotiate its introduction and monitor its use, the income it generates to the employer, and agree the distribution of this income.

Contractual Change

Given that a contractual change is required to enable its introduction, it is imperative that branches/local associations take control of the process.

An employer can change contracts legally in the following way:

- a. By agreement with the recognized trade unions
- b. By agreement with the individuals
- c. By imposition of a change in contract of the individual.

This latter possibility is where the employer gives notice that they intend to make a change on x date, and state what the change is. In law if the change is to the benefit of the individual, which courts are likely to consider this change to be, then if an individual does not object they are deemed to have accepted the contractual change. If the individual does object they would need to opt out of the scheme to retain their present contractual position.

If the imposition of the contractual change is likely to worsen the terms of the contract, or cause a detriment to the individual, then case law is different. The House of Lords has held that an employer simply cannot serve notice of a unilateral change in terms and conditions of employment. The only safe legal route the employer has in these circumstances is to dismiss the individual from their existing contract and offer re-instatement to the individual on the new terms.

Given that UCU has no objection in principle to a salary sacrifice scheme, the union wishes to ensure that the change to contract is made by agreement with the union and no other way.

Contractual change by agreement with UCU

Branches/local associations need to negotiate the best deal on salary sacrifice in their institution, and as it involves a change to contract, they will need to ballot to secure the authorization from members to make the change.

Points to consider in the negotiations.

1. Transparency.

UCU would wish to ensure the process is transparent, and therefore would seek **to encourage employers to explain not only the saving to individuals but also the savings to the employers.**

National insurance savings to both

If not contracted out (not in occupational pension scheme)

2009-10

	Members	Employers
Earnings per week		
First £110	nil	nil
£110.01 to £844	11%	12.8% on all earning
over £844.01	1%	

If contracted out (in occupational schemes like USS)

2009-10

	Members	Employers
Earnings per week		
First £110	nil	nil
£110.01 to £770	9.4 %	9.1%
£771- £844	11%	12.8%
over £844.01	1%	12.8%
*rebate up to £770	1.6%	3.7%

The employer's savings are not normally illustrated, but the savings to the individual are.

Pensionable Salary (£)pre salary	Annual Employee NIC saving (£)*	Actual Employers NIC saving (£)
15,000	89.54	86.68
20,000	119.38	115.57
25,000	149.23	144.46
30,000	179.07	173.36
35,000	208.92	202.24
40,000	236.76	231.14
45,000	28.57	365.76
50,000	31.75	406.40
55,000	34.93	447.04
60,000	38.10	487.68

* tables from <http://nicecalculator.hmrc.gov.uk/Class1NICs.aspx>

In April 2009 there was a change in National Insurance flowing from improvement in state pension. Namely, Upper Accrual Point (UAP) was introduced at the 2008-9 Upper Earnings level (UEL) of £40040 it is intended to be capped, and is the amount of earnings that will count toward state benefits. This largely means the SP2 (Second State Pension will no longer be earnings related but becomes a flat 'additional' pension in the future.) **This means that individuals earning between £40040 and £43,875 will pay 11% national insurance and therefore will receive higher return in terms of savings in a Salary Sacrifice Scheme.**

Pensionable Salary (£)pre salary	Annual Employee NIC saving (£)*	Actual Employers NIC saving (£)
41,000	286.39	333.25
42,000	293.37	341.38
43,000	300.36	349.50

2. Protecting members who may be affected by salary sacrifice.

Salary sacrifice lowers the actual earnings of an individual. It is these earnings that government uses for state pension and other benefits and this can cause a loss to some individuals. **UCU, to protect members in the 'at risk' category, i.e. those on low pay or fixed term contracts whose earnings may vary, must ensure that such members are excluded from automatic membership of the salary sacrifice scheme in the first instance, but that the individuals have the right to opt in.**

Lowering the actual earnings, may bring individuals below the Lower Earnings Limit (LEL). This could affect:

- Basic state pension
- Second state pension
- Contributory state benefits
- Earnings related benefits
- Work related benefits
- Tax credits
- Married women's allowance

Basic state pension

If the individuals earnings as a result of salary sacrifice fall below £87 per week or £4524, **this time will not count toward their state pension.**

Second State Pension

If an individual's earning are between the LEL and the Primary Threshold (£90-£105, in 2008-9), whilst **they are not paying National Insurance contributions they are treated as if they are.**

If an individual's earning between £4,524 and £13,000 then for Second State Pension they are treated as if they are earning £13,000, if the individual is earning between £13,000 and £34,840 (Upper Earnings Limit), then the drop in salary will reduce their earnings for second state pensions.

The above information, whilst important, **does not apply to individuals who are members of a contracted out pension scheme like USS.**

Contributory State benefits

If an individual's earnings fall **below the LEL, he or she may not be entitled to Incapacity Benefit** as they would not be credited for this time and would have to check to see if they were entitled to Income Support based on incapacity, which is a means-tested benefit.

If an individual's earnings fall below the LEL, as they would not be paying national insurance **they would not qualify for Jobseeker's contribution-based Allowance (JSA).** They would have to check to see if they could claim JSA (income based) which is a means-tested benefit.

Earnings related benefits

Maternity Allowance (MA)

If your cash earnings are below **£30 per week on average you will lose your entitlement to MA.** If your cash earnings are between £30 and £115

per week on average you may still be entitled to MA, but at a variable rate. If your average earnings are £115 a week or more, you may receive the full standard amount of Maternity Allowance.

Work related benefits.

If an individual falls below LEL, then they will lose their entitlement to Statutory Maternity Pay (SMP). They may qualify for Maternity Allowance (an earnings related benefit). Even if the individual qualifies for SMP, the higher rate of the first 6 weeks might be affected if they are not covered by their employer's maternity scheme.

If an individual's earnings fall **below LEL, then they will lose their right to Statutory Sick Pay (SSP)**. If this happens they may be covered by Income Support based on incapacity or Incapacity Benefit if they meet the qualifying conditions, unless they are covered by their employer's sick pay scheme.

Tax Credits

Working Tax Credit (WTC) and Child Tax Credit were introduced to help families on middle income. The WTC depends on the number of hours you work, the number of children and whether you pay childcare costs. Salary sacrifice will **lower their earnings which may increase Working Tax Credits**.

Married Women's Allowance

If earnings fall below LEL (£90 per week) contributions will cease. If you have **2 years of this, then you will automatically lose your right to pay only the reduced rate.**

UCU therefore needs individuals at risk to be excluded from the automatic cover, and allowed to opt in only. Some employers apply this to anyone earning less than £6,000, other exclude categories of staff.

Branches/local associations should not have too much difficulty in ensuring this is in the scheme, as employers would not wish to face possible legal action.

3. Lifestyle events

Most of the proposed schemes have an annual date where members can change their option. UCU needs to negotiate to ensure that a note is included in payslips in

advance of this date to remind members. These are life changing events which might mean that an individual might need to revise their decision on the salary sacrifice earlier than one year, so UCU would wish that the employer agree that those falling into any of the categories below are allowed to alter their option.

- Birth/adoption of a child
- Divorce/separation
- Death of a partner
- Marriage/civil partnership
- Notification or commencement of maternity leave
- Return from maternity leave
- Commencement of or return from long term sickness
- Significant changes in working hours e.g. move from full-time to part-time
- Material changes in partner's circumstances (e.g. redundancy)
- Commencement of or return from sabbatical or unpaid leave
- Commencement of, or return from, an overseas secondment
- Reaching State retirement age (currently 60 for women and 65 for men)
- Leaving the USS within three months of being auto-enrolled into the USS
- Change of grade
- Moving from a fixed term contract to a permanent contract
- Becoming eligible to join the USS

4. Agreement on how the savings to employers are used

UCU agreed to the changes in USS rules to enable the sector to benefit from this release of money. Therefore we would want to know what is generated annually and to have a say in determining how it is spent.

Exactly what is determined is for the individual branches/local associations to negotiate locally.

Some branches/local association have negotiated an increased share of the returns to the individuals, but most have taken a collective approach.

The following is a list of what individual branches/local associations have agreed with their employers.

- To provide additional support to the Universities own superannuation scheme
- To remain in a fund, for determination by agreement between the employer and UCU
- To be earmarked for staff welfare benefits
- To be used to enable voluntary severance
- To be earmarked for extra staff
- To provide improvements in the salary structure on top of the Framework.

5. Future Actions

UCU branches/local associations should:

- a. Keep their regional officials informed of the progress, or involve them if appropriate.
- b. Provide copies of the agreement reached to pensions@ucu.org.uk who are collecting this information for use for branches who are negotiating agreements.
- c. Annually publish the amount of savings generated through salary sacrifice to members and also send to pensions@ucu.org.uk

If you need further assistance, please contact pensions@ucu.org.uk or phone 0121 634 7387