



Ms J Fish
Chair
Joint Negotiating Committee

Your ref
Our ref DKB/JMR
Date 17 May 2021

By email only : Judith Fish@dalriadatrustees.co.uk

Dear Judith

Response to Rule 76.1 Report Extension Request

Thank you for your letter of 4 May 2021 requesting an extension to the three month period (“JNC Decision Window”) allowed under the cost-sharing process contained in Scheme Rules 64.10 and 76.4-8 for the JNC to determine how the aggregate contribution rates set out in the Trustee’s Determination issued to the JNC on 2 March 2021 should be addressed. That Determination was issued on the basis of ‘Scenario 2’ of the Rule 76.1 Report and is currently due to expire on 2 June 2021.

Thank you also for the timeline and milestones that you set out in your letter and for clarifying that the extension to the JNC Decision Window you are seeking is for the JNC to conclude negotiations under Rule 64.10 by 31 August 2021.

The board discussed this request at its meeting on 13 May 2021 and noted that the request seeks an extension of the JNC Decision Window of broadly three months.

The board recognises the materiality of the decisions on possible contribution sharing, benefit changes and covenant support measures that need to be made by the JNC in relation to the 2020 valuation and welcomes the progress now being made in developing clear mandates through UUK’s consultation with employers and UCU’s engagement with officers and the scheduled HE sector conference for 2 June.

Therefore, the board agreed at its meeting on 13 May 2021 to the request to extend the JNC Decision Window so that it will now expire on 31 August 2021.

Keeping the Trustee updated

Given the overall valuation timetable challenges, and the risks of members benefits being underfunded for a prolonged period of time, the board welcomes your suggestion of providing regular updates to the Trustee on the negotiations between UUK and UCU to demonstrate progress within the extended JNC Decision Window.

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As the JNC is aware, the statutory deadline for the 2020 valuation will now be missed by a period of some months. In its recent FAQ the Pensions Regulator commented on the timetable for the valuation as follows:

“16. What action is TPR likely to take if the 2020 valuation is not completed within the statutory timeframe?”

*The statutory deadline for completing the 2020 valuation process is 30 June 2021 – 15 months from the valuation effective date of 31 March 2020. We have enforcement powers which we can use if a valuation is delayed beyond the statutory deadline. We understand that the deadline is now unlikely to be met and the reasons for this. Provided that there are no undue delays, we believe the interests of scheme members will be best served by a valuation which has been fully considered and is compliant with Part 3 of the Pensions Act 2004. If it is the case that the statutory deadline is going to be missed, then we would want to understand the position at that point in time (including the extent to which the trustee is exercising its powers under the scheme’s trust deed and rules). In particular, we would **expect the trustee to provide a plan which would set out a credible programme to complete the 2020 valuation in a reasonable timeframe (including any employer consultation steps). If part of this timeline is taken up by further JNC consideration, we would expect both the trustee to set out an acceptable period of time for the JNC process to be completed, and the JNC to cooperate with and work within that timeframe.** Provided the trustee has a clear programme to conclude the 2020 valuation within a reasonable timeframe and then matters progress in accordance with this timetable, we would not anticipate using our powers in respect of the breach of the statutory deadline.”¹*

In view of the Trustee’s ongoing duty to take all proper steps to comply with the statutory timetable, and given the Regulator’s expectations of both the Trustee and the JNC, we believe that it is important for the JNC:

- to seek to reach an agreement before 31 August; and
- that the Board is kept well informed of the JNC’s progress and its plan to make a decision before that date.

As such, the Board requests regular formal updates from the JNC and would also like to invite you and the UCU and UUK JNC Chairs to its meeting on 20 July 2021 so that it can assure itself that there will not be unreasonable delays to the process and that further action by the Trustee is not required to ensure the valuation can be completed.

We have set out below the key components of the JNC decision-making process for a full Recommendation on benefit change and covenant support and a deed on employer exits. The Board will wish to consider the likelihood of the process completing within the JNC Decision Window based on the progress of discussions at the JNC and the inputs provided by the stakeholders when it meets in July.

Preparation of proposals for the JNC

Before the JNC makes a decision on benefit design, it will require confirmation that any proposed benefit changes are capable of being implemented (and the timescales for doing so) together with confirmation from the Trustee as to the likely contribution rate that would apply. Given that the provision of covenant support by employers materially impacts the contribution rate, it will also be important for there to be clarity as to what covenant support is being proposed and the Trustee’s views on the impact that such proposals

¹ Emphasis added by the Trustee

have on contribution rates. The Board will then need to provide subsequent confirmation that proposals can be implemented and none of the conditions in Rule 79.7 apply.

We anticipate that the following documents would need to be submitted by UCU and UUK in support of final proposals being presented to the JNC which, in order to provide assurance, require input from the USS executive:

- Full contribution and benefit change specification
- Full covenant support specification
- Deed of Amendment for a rule change on employer exits

Preparation of these documents will take a number of weeks, depending on the complexity of the proposals being considered, and so we would encourage stakeholders to seek as early engagement with the executive as possible.

At previous valuations, proposals have also been supported by business cases and by modelling of member outcomes on a range of example members and a set of clearly documented assumptions. We stand ready to support the stakeholders to ensure that proposals being considered by the JNC are complete proposals.

Implementation timelines

The USS executive provided an update to the JNC on the timeline for implementation of benefit changes at its meeting on 15 April.

The position remains that in order to be very confident of making contribution and benefit changes for 1 April 2022 JNC Recommendations on benefit change and covenant support would need to be made by the JNC by the end of July.

If a final decision is made by the JNC by the end of August there is still a possibility that statutory consultation processes could be completed in time for 1 April 2022 for hybrid benefit parameter changes (other forms of benefit changes would take significantly longer) but there may be a short delay in contribution changes given payroll dependencies. However we can't guarantee this if there are any disruptions or delays to the process. We are reminding the JNC of this information so as to be transparent about the need for final decisions being made under Rules 76.4 to 76.8 and 64.10 as soon as possible.

We are extremely hopeful that the additional time allowed will increase the prospects of an outcome to the valuation that can be supported by both UCU and UUK through a Recommendation on benefit change and covenant support and a deed on employer exits.

In the event that the JNC was unable to agree its response through a Recommendation on benefit change and covenant support and a deed on employer exits by 31 August 2021, or in the event it became apparent in the meantime that the process was unlikely to lead to resolution, either through agreement of UCU and UUK or a casting vote of the JNC Chair, then the Trustee would need to review its position under the Contribution Determination and the cost-sharing provisions of the Scheme and determine how to address the increased cost of the current benefits.

Our expectation is that, dependent on the covenant support measures in place, this would need to include an assessment of affordability and consideration of further advice from our covenant advisors and Scheme Actuary. This would be considered in the context that it is in the JNC's remit to agree to changes to the Scheme Rules under Rule 64.10/76.4-8 or at any time under Rule 79 to address affordability concerns. The

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Board will consider these issues again when it meets in July, alongside the formal updates from the JNC, and will engage with UUK as appropriate to understand the likely covenant support position that would apply should the JNC be unable to agree its response under Rule 64.10.

We look forward to working with you and the stakeholders to support the timeline and milestones set out in your letter.

Yours sincerely



Chair
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