Summary of the report to the trustee on the responses to the statutory employer consultation

This paper summarises the formal report to the trustee on the responses to the statutory employer consultation with affected members and their representatives, which closed on 17 January 2022. The trustee considered this at its 28 January meeting before deciding whether it wished to propose any modifications to the JNC's proposed benefit changes of 31 August 2021 (which will require JNC consent).

In considering the responses, the board has been mindful of the trustee's primary role under the Scheme Rules and trust law as administrator of the Trust, with matters of benefit design being primarily a matter for the stakeholders, via the JNC. After careful consideration of all the responses received, the board has not identified any fundamental issues with the proposals from an administrative or operational perspective and, as such, it does not intend at this time to propose any modifications to the proposed changes.

The JNC will now consider whether, in light of this consultation, it wishes to recommend any amendments to its benefit change proposals to the trustee and (if so) be aware of the related issues which will need to be explored and concluded ahead of any formal recommendation being made under Rule 79.7.

JNC consent to any amending deed reflecting the current or modified benefit change proposals will be required prior to 28 February to avoid the second leg contributions under the Schedule of Contributions coming into effect from 1 April 2022.

What has the response to the consultation been, and what were the key messages from the responses received?

The consultation commenced on 1 November 2021, and ran until 5pm on 17 January 2022, a period of 77 days. A total of 4,687 responses were submitted from affected employees and representatives (across 155 employers) – this compares with the 2015 and 2018 consultations which received 3,895 and 4,333 total responses respectively.

The formal consultation report sets out the analysis of all responses received from affected employees and their representatives, and the issues raised in the responses. Members of the JNC previously also requested further quantitative analysis on the responses to consultation question 5 (where individuals were asked to give their view on the order of their preferred approaches to addressing the increased cost of benefits). This analysis has been published here.

The majority of responses received in relation to the proposed benefit changes were negative with the number of members expressing a negative view in respect of those questions seeking views on individual elements of the proposals ranging from 78% to 93%. The following brief summary of the main themes arising in relation to the benefit change proposals from the 31 August 2021 JNC recommendation should be viewed in that context:

- As can be seen from sections 3.5 and 3.7 of the attached report, the proposed capping of inflationary increases to accrued benefits both pre- and post-retirement has generated the most comment out of the package of benefit proposals, with respondents largely concerned about the longer-term effect of this on retirement benefits.

- The next most negatively viewed (see sections 3.2 and 3.7) proposal appears to be the accrual rate reduction: that the reduction is too significant (in a single step).

- The reduction to the salary threshold (see sections 3.3 and 3.7), although third in this list, does have an added nuance with the proposed reduction of the cap to future increases to the salary threshold tapping into the strength of feeling around the inflationary cap on revaluation/indexation of pre and post-retirement benefits.

- In the responses relating to the 9.8% member contribution rate (section 3.6), 9.8% is felt to be expensive for the proposed package of benefits. Contrastingly, some individuals responded to say they would rather pay more and retain the current benefits, and this view was strongly supported by the answers to question 5 (see section 3.7) where the most popular of the four named approaches to dealing with increased scheme costs was to pay higher contributions (although how much higher was not defined). Finally, a number of respondents gave views on the contribution rates to the Investment Builder on salary above the salary threshold i.e. a 9.8% contribution rate versus 8% invested (and 21.4% employer contribution rate versus 12% invested), which would affect a greater number of members if the proposed reduction to the salary threshold and cap on future increases to the salary threshold were implemented.

- In relation to the 'second leg' of the dual rate schedule of contributions, around half of responders gave a negative view: the main concerns expressed (apart from the views on the 2020 valuation – see below) were that the rates would be unaffordable for the individual and/or their colleagues, which could in turn have a negative effect on opting out numbers and the sustainability of the scheme. Of the remainder of responses, the two primary views were a preference for the full 'second leg' position so that current benefits would be retained, and/or a proposal to pay the early 'second leg' contribution rates and retain unchanged benefits on the basis that it would encourage further negotiation with employers and alternative solutions (including an updated actuarial valuation).

- Finally, it appears making available greater flexibility around benefits and contributions would be positively viewed by many members whether for themselves or, based on their own experiences, for current or future colleagues at appropriate stages of their working lives. However, there is no clear view on what the nature of such flexibilities should be.

Finally, a common theme throughout the responses was the 2020 valuation and related issues – many of those responding made points relating to the timing of the valuation, asset value changes since March 2020, the approach to the valuation, prudence etc. It is clear that many of the individuals who have engaged with the consultation and provided their views on the proposals still feel that the proposed changes may not be needed if an updated valuation were to be performed or the trustee amended its approach.

In addition, to undertaking its own internal assurance processes, the trustee commissioned an independent third party to review the consultation analysis process and formal report. The third party has confirmed to the board that the approach to the analysis of responses has been robust and coherent, and the resulting report on the outcomes of the consultation is complete, objective and impartial.

A summary of the formal consultation report has been published on the USS website following agreement by the board.

What are the next steps now?

The trustee is the party which has the power under the Scheme Rules to decide to make a listed change to the scheme by amending the rules.

It is, therefore, is the legal person required by the Consultation Regulations to consider the consultation responses before making a decision as to whether or not to propose any associated modifications.

Whilst the JNC has no prescribed duties under the Consultation Regulations, it has primary responsibility under USS scheme rules for recommending benefit changes in these circumstances. In view of this and of its powers in relation to scheme rule amendments under Rule 79.7, the JNC now has an opportunity to consider recommending modifications to its proposed benefit changes in light of the responses to the consultation.

The trustee is required to enact the changes recommended by the JNC except in very limited circumstances.

The 28 February is the deadline for signing of an amending deed to implement benefit and/or contribution rate changes if they are to take effect from 1 April 2022 (rather than the fall-back scenario of contributions under the second leg of the SOC). For practical purposes the ***22 February JNC meeting is likely to be the final opportunity for the JNC to recommend benefit changes and still have them included in the deed by 28 February*** (assuming such changes are relatively minor, more material changes would likely take longer to incorporate).