

COMPLAINT TO THE CHARITY COMMISSION REGARDING THE GOVERNANCE AND REGULATION OF UNIVERSITIES UK, 1001127.

Introduction

1. This complaint is with respect to Universities UK (UUK), and to the absence of any regulation thereof. UUK is the lead adversary in the current national strike called by the Universities and Colleges Union (UCU), of which I am a member. UUK claims to represent UK Universities, and I am also a member of a university, the University of York. However, despite both affiliations, I make this complaint in a personal capacity.
2. My complaint regards the governance of UUK, and the apparent failure to regulate UUK given very publicly alleged problems of ultra-vires, transparency, due diligence, accountability and other aspects of good governance. These are very serious given the fact and scale of the strike, which has run for over 3 weeks, and the matters at stake.
3. These matters are, fundamentally, a shift in benefits paid by the Universities Superannuation Scheme (USS). Its assets are approximately £50bn; it has 192 000 active members. At UUK's direct instigation, it is proposing to switch from a defined benefits scheme (DB) to a defined contribution (DC) scheme.
4. As well as sending this complaint to you, it will be made publicly available online.

The Purpose of Universities UK

5. The Mission of UUK is (according to the Charity Commission website)
to be the voice of universities, helping to maintain the world-leading strength of the UK university sector and supporting our members to achieve their aims and objectives.
6. The objectives of UUK, according to its Memorandum of Association (MoA) are as follows
To promote and provide facilities for discussion and consultation between representatives of university institutions in the UK on any matters affecting or relevant to the university sector of higher education in the UK
To formulate policies on any matters affecting or relevant to the university sector of higher education in the UK
To represent the university sector of higher education in the UK and to conduct dealings and to liaise with the government, any local, national or other institutions, authorities, agencies, bodies or persons, wheresoever in the world situated.
To provide information, advice and assistance to universities within the UK, or any of their representatives, on any aspect of educational affairs, including administrative and financial matters relating to or connected with education

To take any steps (including without prejudice to the generality of the foregoing the issue, maintenance, financing and enforcement of legal proceedings) for the purpose of protecting the interest, reputation or good standing of the universities or the university sector of higher education in the UK or the integrity of any degree, diploma or other awards issued by universities in the UK

The Context of the Complaint: General

7. UUK are the employers negotiating body in an industrial dispute that has led to a national strike of university lecturers and professional support staff who belong to UCU. At the time of writing, there have been 9 days of strikes in 61 universities, with another 5 days planned starting today and following that, another 10 days of strike. The strike has been properly called in law, following stringent ballot requirements that over 50% of the actual union membership in a given university vote to support that strike.
8. That any charity is an adversarial lead actor in such a controversial and socially damaging dispute – not least to hundreds of thousands of students who are missing classes – must be cause for your concern with respect to its public good. That a charity seeking to maintain the strength, reputation and good standing of universities generally is acting in this role must exacerbate that concern.
9. Over the weekend just passed, a Parliamentary Petition requesting that UUK is subject to Freedom of Information regulations passed the 10 000 signatures mark. This means this must receive government attention and a response. This is unique in the history of the charity sector, and for a charity under your regulation. This too, must be a cause for your concern.
10. The centrality of a charity in a dispute over a fund of this amount must draw it to your attention. In this, that allegations are rife in the public sphere regarding the intentions, behaviour, and competence of this charity generally, and toward those to whom it claims specific responsibility, damages the reputation of the charity sector in the UK as a whole,

The Context of the Complaint: UUK's Conduct in Negotiations

11. UUK represent the employer's side in the Joint Negotiating Committee (JNC) of the Universities Superannuation Scheme (see for example <https://www.uss.co.uk/how-uss-is-run/valuation/2017-valuation-updates/update-on-the-2017-valuation-funding-review>). Again, that a charity represents solely one side in a dispute – an employer – seems to me to be inconsistent with charitable purposes. That the other party to the dispute are also encompassed by UUK's mission and MoA suggests, to me, that UUK is acting against those goals.
12. The disputed switch from DB to DC was proposed by UUK as 'employer' representatives to the JNC. They are represented in equal number to employee representatives, but their proposal was carried with the support of the JNC Chair
13. It is important to note in the context of this complaint that not all 'employers' in the USS scheme are universities or UUK members, notwithstanding that UUK represents them all. So, for example UUK itself is an employer in the scheme, and has its own position as an

employer on USS pensions risk in its annual report. It is not central to this complaint, but there seems to be a conflict of interest here.

14. By and large, these non-university, non-UUK 'employers' appear to be relatively large in number, but small in numbers employed, although the exact nature of this distribution is not transparent.
15. In formal documents put to the JNC, and to USS by UUK, UUK stated 42% of employers wanted to reduce their risk exposure deriving from USS as a DB scheme. This was a large enough proportion to require a shift to a DC scheme to reduce their risk exposure. This was a significant enough minority to require a move to a DC scheme. Because the formal submission is not in the public domain, the below is cut and paste from a leaked document on twitter; paragraph 4.4 is salient.

4.4 From engagement with employers, UUK is clear that the vast majority of employers do not support any further weakening of the assumptions. The proposed assumptions are at the very top end (in terms of risk) of what would be acceptable. UUK has developed this position on the basis that 53% of employers responding to the survey preferred, on balance, to accept the level of risk being proposed by the trustee, with many of these respondents noting that it was at the limit of what they would find acceptable. However, it should be noted that a large minority of employers (42%) want to take less risk – including some of the very largest employers. Only a small minority (5%) of employers supported the idea of accepting more risk.

4.5 UUK notes the asymmetry of responses, with far more employers favouring taking less risk (the net "take less risk" position, defined as number of employers wanting less risk minus those wanting more, is as high as 37%). It would be remiss not to recognise the concerns that have been raised by a sizeable number of employers regarding the level of risk proposed, and UUK also acknowledges the challenges

16. This 42% statement was based on a survey of employers (again, note, not members), and that it was made is not a matter of dispute. The paragraphs above are taken from an Information Pack provided to members of the JNC by USS as part of the UUK case to change the scheme to DC.
17. That 42% of employers wanted to take less risk was a determinative fact. The board of USS (USSL) figure at face value, and put it to the JNC as a reason for moving to the DC scheme. From the minutes of the JNC discussion of 26th October 2017

II. The USSL board believed that the response from UUK indicated a need for the trustee to reduce the amount of risk in funding the benefits from the maximum put forward in the consultation. UUK had explained that only 5% of the employers responding looked for the trustee to take more risk and 53% accepted the risk as it was, though a significant minority of 42% (which included some of the largest employers) had indicated that they would prefer the trustee to take less risk. It was noted that TPR had also indicated that the level of risk was at the top end of what it would consider acceptable were it to be convinced that the strength of the employer covenant justified the covenant being in their top quartile ranking and acknowledged that view may be impacted by the input from the employers. The UUK response had indicated to the trustee that overall UUK did not have sufficient appetite to take the highest level of risk proposed given the net "take less risk" position they cited in respect of 37% of responders.

18. However, research by Professor Michael Otsuka of the London School of Economics, has led to questions as to how that 42% figure was arrived at. Not least, Professor Otsuka argued that 42% may have included double counting of Oxford and Cambridge Universities, and its colleges, each being separate employers. Professor Otsuka's research on this matter can be found here: Professor Otsuka's research on this matter can be found here: <https://medium.com/@mikeotsuka/oxfords-and-cambridge-s-role-in-the-demise-of-uss-a3034b62c033> and more generally here: <https://medium.com/@mikeotsuka>
19. Further questions were raised about whether that 42% included returns to the survey from those who had explicitly stated that theirs was not an official institutional response on behalf of their institution.
20. The nub of this complaint regarding UUK's conduct and representation of this survey, and its use to sustain a particularly damaging industrial dispute are best summarised in a letter to UUK from the Master of Churchill College Cambridge Professor Dame Athene Donald DBE, FRS. Note, that in writing this, Professor Dame Donald represents an 'employer' in UUK terms. The letter in full is at <https://www.chu.cam.ac.uk/news/2018/mar/9/letter-master-athene-donald-alistair-jarvis-uuk/>. The relevant section here states:

In order for me to be able to reassure my fellowship that the UUK conclusions were properly reached based on college responses, I would therefore like the following questions to be answered:

1. How were the responses from different institutions weighted? Was the weight based on numbers of employees and pensioners, University financial position, or some other set of criteria?
2. How were non-authorized responses weighted compared with those for which there has been full consultation?
3. What weight was given to replies from non UUK institutions (such as Oxbridge Colleges) compared with those from UUK employers?

Transparency is necessary if trust in the dialogue is to be rebuilt. Currently the lack of clarity on these questions – as indeed on many others – is destabilising the entire sector to everyone's cost.

In Sum

21. There is lengthy national strike, in which a charity, UUK is lead adversary. This appears contrary to the general charitable requirement of public good.
22. UUK is lead adversary against tens of thousands of university lecturers and professional support staff. Yet its mission and MoA claims that its purpose is to represent and speak for them and their interests, as member of universities.
23. There are particular concerns about the transparency and competence with which UUK has surveyed employers in the USS scheme, and represented the results of that survey. It is not clear whether the 42% represents the official view of those surveyed and what proportion of UUK members are part of that survey. It may even be the case, in its conflation of 'employers' with 'UUK members' UUK is acting against the collected stated wish. Yet that figure of 42% has been determinative.
24. The mistrust of that charity has led to a petition to parliament signed by over 10 000 people requesting it to be subject to Freedom of Information regulation
25. That charity has presented a position as a representative of 'employers' who include those outside its remit for 'universities'.

The Complaint

26. My complaint is as follows
 - a. It appears that, as a lead adversary in a national dispute with particular, partial aims, UUK is not meeting the basic requirement that a charity acts for the public good
 - b. It appears that UUK is acting outside its Mission & MoA which specify its role with respect to Universities, by acting for 'employers' who do not include universities, and whose goals may not be those of universities. The charity is de facto, and de jure in terms of USS/JNC procedures, an employers association.
 - c. Conversely its Mission and MoA charge it with purpose towards the University sector as whole. Acting against such a substantial proportion of that sector's individual members, in the light of their balloted wishes, is similarly ultra vires.
 - d. The disputed matter is a fund with £50 billion of assets, there is a national strike, and tens of thousands of university staff stand to be impoverished in retirement. Yet UUK cannot, or will not show that its consultation with employers, which is the basis of its response to USS, and determined the outcome, was conducted and represented fairly, thoroughly and with due diligence.
 - e. The ongoing behaviour of Universities UK, in responses to requests like those of Dame Donald, in its preparation and timing of negotiations are clearly raise serious concerns regarding accountability, transparency, and good governance.

- f. UUK seems to have acted with impunity in this matter, and not been subject to the regulatory oversight that should have been expected given its role and the matters at stake.

Urgent and Non-Exhaustive

27. This complaint is urgent. I am about to go on strike for another 5 days, with further strikes planned. Students are not being taught in this period, and exams are not being set or marked. The loss of salary as a consequence is substantial. But the potential loss of pension is phenomenal. Time is of the essence.
28. There are, it seems to me further causes for concern, beyond those I feel competent or knowledgeable to raise here. Any investigation must consider all those raised and in the public domain now and in the future, and not simply those I set out here.

Professor Bill Cooke
12 March 2018