Students' Union Superannuation Scheme ("SUSS"): note for employers on bulk transfers out of the scheme

WHAT IS THIS NOTE ABOUT?
This note is for students' unions which participate in SUSS, the pension scheme which was formerly used for students' union employees to build up pension scheme benefits. It is possible for a participating students' union to transfer its assets and the liability to provide pensions to its employees and former employees who are members to another occupational pension scheme. This is achieved by way of what is called a 'bulk transfer'. This note explains in headline terms what a bulk transfer involves, what is required at the outset, and some of the advantages and disadvantages. It is designed to help students' unions to develop their thinking about whether a bulk transfer is a feasible option for them.

1 BACKGROUND – WHAT IS SUSS?

1.1 SUSS is a multi-employer, non-associated pension scheme. **Multi-employer** means that multiple students' unions participate in the scheme. **Non-associated** means that the students unions are not connected to each other.

1.2 SUSS closed to the build up of pension benefits in 2011. Whilst SUSS is no longer open to the build up of benefits, students' unions continue to participate in the scheme.

1.3 Participating students' unions have ongoing funding obligations (i.e. they must keep making contributions) because SUSS is a **defined benefit** pension scheme. That is, SUSS pays out a guaranteed level of pension benefits to students' union employees and former employees who were members of the scheme.

1.4 Every three years SUSS's assets and liabilities are assessed by an actuary to see whether the scheme has enough money to pay the benefits to members (a 'valuation').

1.5 The funding obligations continue to apply to the participating unions, because SUSS, like many defined benefit pension schemes, is not fully funded. In other words, there isn't currently enough money in the scheme to pay members' benefits in full.

1.6 Without the students' unions' continued payment of contributions to SUSS, the full benefits which members are entitled to cannot be met.

2 BACKGROUND – WHAT IS THE ATTRACTION FOR A UNIVERSITY AND ASSOCIATED STUDENTS' UNION OF A BULK TRANSFER?

2.1 Some universities have their own defined benefit pension scheme. The scheme might be open to the build up of benefits, or closed (like SUSS).

2.2 One option available to such a university, and the associated students' union, is to transfer the assets and liabilities associated with the students' unions' participation in SUSS to the university scheme (a 'bulk transfer').

What is the attraction of a bulk transfer?

2.3 This can create efficiencies because, once the bulk transfer of SUSS assets has taken place, the university and/or the associated students' union have responsibility/ies to the university scheme only, rather than to both the university scheme and SUSS. The university may also consider that the bulk transfer will result in economies of scale, greater control over its assets, and its ability to manage its liabilities.

What must be in place for this to be an option for your students' union?

2.4 There <u>must</u> be a stand-alone employer occupational pension scheme already in place (or in place by the time of the bulk transfer), which provides defined benefits and can act as the receiving scheme (i.e. to which the transfer of SUSS assets is made). Bulk transfers cannot be made from SUSS to any defined contribution pension scheme.

2.5 If the university associated with your students' union does not have a defined benefit scheme in place, or access to such a scheme, a bulk transfer will <u>not</u> be an option for your union.

2.6 Also, the rules of the receiving scheme must allow the transfer in of benefits from a scheme such as SUSS. The students' union should consider taking its own legal advice before approaching the SUSS trustees, so that the union knows that there are no obvious bars to such a bulk transfer taking place.

2.7 Further, the SUSS trustees would expect the associated university to have considered and confirmed (with board/governing body in principle approval) that a bulk transfer is a viable option in the circumstances, <u>before</u> the SUSS trustees consider the option in any detail. The students' union and its associated university may also want to consider, including taking its own advice on, other options which might be available.

2.8 Importantly, the receiving scheme's trustees will need to be satisfied that they consider a bulk transfer to be appropriate in the circumstances before agreeing to any bulk transfer. Please see section 5 below for more detail.

What else should a students' union (and associated university) consider before committing to a bulk transfer?

The scale of the project

2.9 A bulk transfer is a large and complex project, which can be expensive and time consuming for those involved. It can take between 9 to 12 months (sometimes longer) to complete a bulk transfer; from the initial planning and proposal stage, through to the bulk transfer terms being negotiated and finalised, and the transfer itself taking place.

2.10 Ideally, there would be a single main point of contact at the students' union and/or university available throughout the project to liaise with the transferring trustees and receiving trustees.

2.11 Significant professional fees are involved, as each of the SUSS trustees and the receiving scheme trustees will take their own legal and actuarial advice on the bulk transfer terms. Investment advice may be needed by both sets of trustees to consider how to disinvest assets from SUSS, how to transfer those assets, and how to re-invest them in the receiving scheme. The exiting students' union will also need its own professional advice. Specialist covenant advice may also be needed.

Financial implications for the exiting students' union and associated university

2.12 Importantly, the value of the assets being transferred to the receiving scheme will usually be significantly less than the value of the liabilities being transferred (taking into account the current funding position of the SUSS and the way in which the SUSS trustees' actuary will calculate the value of the assets to be transferred).

2.13 This means that the receiving scheme may require the exiting union (or its associated university) to make a significant additional financial commitment to the receiving scheme at the time of the bulk transfer in recognition of this. See also 5.2 below.

2.14 The SUSS trustees would also expect the exiting employer to meet the costs associated with the bulk transfer, including the SUSS trustees' adviser costs. Given the size of a bulk transfer project, the students' union (and associated university) should be prepared for such costs to be significant.

3 WHAT IS A BULK TRANSFER? - MORE DETAIL

3.1 In simple terms, a bulk transfer means that the responsibility for providing benefits attributable to employment with the exiting employer, (i.e. the departing students' union is transferred from one pension scheme (i.e. SUSS) to another.

3.2 This is achieved by way of a transfer of assets, often in the form of a cash payment, (the 'transfer payment') from SUSS to the receiving pension scheme.

3.3 The transfer payment is calculated by the SUSS scheme actuary. This is calculated taking into account the assets held by SUSS which are attributable to the departing employer (i.e. its 'share of fund').

3.4 In return, the trustees of the receiving pension scheme assume responsibility for the payment of the transferring members' benefits.

3.5 Care should be taken to ensure that the necessary systems are in place to ensure the smooth payment of transferred members' benefits following the transfer date.

3.6 After the transfer:

(a) SUSS continues to operate in relation to the remaining deferred and pensioner members; but

(b) SUSS no longer has responsibility for providing the benefits for the members whose benefits formed part of the bulk transfer (the transferring members). Instead, as noted above, their benefits are provided from the receiving pension scheme.

4 WHAT IS THE SUSS TRUSTEES' STARTING POSITION IN RELATION TO A BULK TRANSFER?

4.1 The SUSS trustees are open, in principle, to a bulk transfer. This is subject to them being satisfied that the transfer is in the interests of both the transferring members, but also those SUSS members who remain in SUSS.

4.2 This requires the SUSS trustees to consider (amongst other things):

(a) whether the respective pension scheme rules allow a bulk transfer to take place;

(b) the funding position of the proposed receiving scheme, by comparison with SUSS (e.g. is the receiving scheme better funded than SUSS); and

(c) the employer covenant supporting the receiving scheme, again, by comparison with the covenant supporting SUSS.

4.3 The 'covenant' is the measure of the participating employer's (or employers') ability to meet its (or their) legal obligations to support the scheme, both now and in the future.

4.4 The SUSS trustees must also be satisfied that the covenant supporting the SUSS is not weakened as a result of the proposed bulk transfer. This is of particular significance for a multi-employer scheme such as SUSS where the exit of a larger, and/or financially stronger, participating employer, could potentially reduce the overall covenant support for the scheme.

4.5 To deal with this concern, the transfer payment made by SUSS to the receiving scheme is reduced by a **covenant premium**. This is an amount representing the loss of covenant (or loss of employer support) expected to result from the exit of the employer.

4.6 A further reduction may be made if any of the exiting employer's SUSS members are not included in the transfer. This may be the case, if, for example, they were employed by more than one union during their time in SUSS.

4.7 A further reduction would also be made to the transfer payment to reflect the share of SUSS orphan liabilities attributable to a departing students' union. The SUSS actuary calculates this reduction by reference to the amount of the orphan liabilities determined on the section 75 Pensions Act 1995 basis (i.e. the most prudent way of calculating the scheme's liabilities, based on the estimated cost of buying out the liabilities with an insurance company).

4.8 Orphan liabilities are, in broad terms, the liabilities which are attributable to members whose employers no longer participate in SUSS.

4.9 The appendix to this note sets out how the calculation might work for a 'typical' participating students' union.

5 WHAT ARE THE RECEIVING SCHEME TRUSTEES' CONSIDERATIONS?

5.1 The receiving scheme trustees will need to consider whether to accept the proposed bulk transfer of assets and liabilities into their pension scheme. Essentially, theirs is the mirror image position to that of the SUSS trustees. The receiving scheme trustees will need to consider (amongst other things):

(a) whether the respective pension scheme rules allow a bulk transfer to take place;

(b) the funding position of the transferring scheme (i.e. SUSS), by comparison with that of the receiving scheme; and

(c) the resulting impact on the employer covenant supporting the receiving scheme.

5.2 It may be that the receiving scheme trustees ask for additional comfort from the exiting employer (or associated university employer) to fully fund the liabilities they accept as part of the transfer including, for example, if the effect of the bulk transfer is expected to dilute the receiving scheme's funding position. Such additional comfort might be in the form of a cash payment made at the same time as the transfer payment.

6 IN MORE DETAIL: WHAT DOES THE PROCESS INVOLVE?

INDICATIVE STEP PLAN

6.1 The following provides an indication of the key milestones leading up to a bulk transfer.

Step	**Who does this**	**Indicative timescales**
Proposal to SUSS trustees	Exiting employer (or associated university)	Month 1
Completion of legal due diligence questionnaire	Exiting employer	Months 2-3
Parties entering into a data sharing agreement	Exiting employer/associated university/SUSS trustees	Months 2-3
Initial consideration of transfer provisions in SUSS and receiving scheme rules	SUSS trustees' legal advisor	Months 3-4

Drafting of actuary's letter and associated discussions on calculation date and assumptions for transfer amount	SUSS trustees' actuary working with receiving scheme actuary and exiting employer actuary	Months 4-5
Review investment considerations and drafting initial asset transfer plan	SUSS trustees' investment advisor, working with receiving scheme investment advisor.	Months 4-5
Drafting of transfer deed (which documents the basis of the transfer) including benefit specifications to describe the benefits which the receiving scheme will need to pay to and in respect of the transferring members	SUSS trustees' legal advisor	Months 4-5
Drafting of deed of cessation (which documents the exiting employer's departure from SUSS).	SUSS trustees' legal advisor	Month 5
Notice to cease to participate as required by SUSS rules (to trigger SUSS trustees' ability to make the transfer)	Exiting employer	Month 6
Negotiation of transfer deed (including benefit specifications)	The legal advisors of SUSS trustees, the exiting employer, the receiving scheme trustee and associated university – with input from respective actuaries, as needed.	Months 6-7
Finalise investment transfer plan and agree point of asset hand over	SUSS trustees' investment advisor, working with receiving scheme investment advisor.	Months 6-7

Drafting member communication to transferring members notifying them of the bulk transfer (without member consent)	SUSS trustees' legal advisor	**To be sent at least one month before transfer date** Month 7
Actuarial certification required to confirm that transfer credits available to transferring members are no less favourable than rights being transferred	SUSS trustees' actuary	Month 7
Complete transition of assets	SUSS trustees' investment advisor	Month 7

7 WHAT ARE THE NEXT STEPS IF A STUDENTS' UNION WOULD LIKE TO PROGRESS A BULK TRANSFER?

7.1 Please contact the SUSS trustees for more information and to answer any additional questions you have.

7.2 If, having read this note, a bulk transfer is of interest to you/ your students' union, the next step would be for you to make a formal proposal to the SUSS trustees, and to also complete an initial due diligence questionnaire (provided by the SUSS trustees). The SUSS trustees ask for these so that they are given as much information as possible up front about the proposal.

Gowling WLG UK LLP, 12 July 2022

BARNETT WADDINGHAM
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Appendix: Worked example

The figures below are indicative, based on the position for a typical employer participating in SUSS. For the purposes of this illustration, we have assumed that:

- The current SUSS funding level is 55% on a Scheme Funding basis but 40% on a solvency basis (the measure used to estimate the cost of securing the Scheme's benefits with an insurance company).
- The transferring employer has one 'split-service' employee (i.e. a SUSS member who was employed by more than one participating employer during their time as an active member) whose liabilities will remain with SUSS if the transfer is completed.

Calculation inputs

Input	Value	Scheme funding level	Share of fund	Explanation
Scheme Funding liability for transferring members	£10,000,000	55%	£5,500,000	This is the employer's share of the triennial actuarial valuation, updated based on market conditions to the calculation date. The difference between the Value and the Share of Fund (i.e. £4.5m) is the deficit that the employer is paying off via the deficit contributions
Solvency liability for transferring members	£15,000,000	40%	£6,000,000	The solvency liability is a broad estimate of the cost of insuring the union's benefits.
Solvency liability for transferring union's share of the split service member	£150,000	40%	£60,000	This member will stay behind in SUSS, and need to be fully funded on a solvency basis

Transferring union's share of SUSS orphan liabilities (on a solvency basis).	£400,000	40%	£160,000	Currently around 2.6% of the union's liabilities, this also needs to be fully funded

Bulk transfer payment calculation

Calculation step	Contribution to transfer payment	Explanation
Share of fund in respect of transferring liabilities for transferring members	**£5,500,000**	The starting point for the transfer – only the share of fund of £5.5m is paid over to cover the £10m of liabilities – the £4.5m deficit transfers, and so other unions' deficits are protected
Less covenant premium (2.5% of transferring liability)	(£250,000)	A reduction to the transfer paid – slightly reducing the deficit of remaining unions, to compensate for loss of covenant.
Less allowance for shortfall against solvency liabilities in respect of remaining split service member (£150,000-£60,000)	(£90,000)	Cost of fully funding union's share of non-transferring member
Less allowance for share of orphan liabilities (£400,000-£160,000)	(£240,000)	Cost of fully funding union's share of orphan liabilities
Less allowance for assumed expenses, including expected PPF levy	(£50,000)	In practice union will pay actual expenses, which may be higher.

Total available transfer payment	**£4,870,000**
Total Scheme Funding Liability transferred	£10,000,000
Total solvency liability transferred	£15,000,000

So, before the transfer, the union has a deficit of £4.5m, plus potential exposure to other employers' liabilities in the future. After the transfer, the union may have a lot more control (depending on the receiving scheme), but a higher initial deficit (£5.13m, depending on the approach taken in the receiving scheme), and no exposure to other SUSS employers. The deficit in SUSS for remaining unions has reduced by the difference - £0.63m.