

Students' Union Superannuation Scheme ("SUSS")

2023 Incorporations

1 INTRODUCTION

- 1.1 This briefing note is for the unions of the National Union of Students (United Kingdom) ("**NUS**") who are participating employers in SUSS ("**SUSS Employers**") and who have yet to change legal structure from an unincorporated union to an incorporated union.

What does this briefing note do?

- 1.2 Complex pensions issues arise when SUSS Employers incorporate which need to be carefully managed.

- 1.3 This briefing note:

- (a) is intended to help unions who are looking to incorporate during 2023. It has been written by the trustees of the SUSS ("**SUSS Trustees**") and their advisors;
- (b) is designed to provide an overview of the incorporation process;
- (c) contains important information as to how the incorporations will be conducted during the incorporation window; and
- (d) sets out some practical suggestions to ensure that the 2023 incorporations are as smooth and cost efficient for SUSS Employers as possible.

- 1.4 The SUSS Trustees have also produced separate guidance, which is updated on a yearly basis, and was last updated in January 2023 (the "**Guidance**").

What is the Guidance?

- 1.5 The separate Guidance sits alongside the briefing note. The Guidance provides more detail for unions should they decide to go ahead with the incorporation process during the 2023 incorporation window.

- 1.6 The SUSS Trustees will issue the Guidance to those unions who confirm to the SUSS Trustees that they intend to incorporate in 2023.

- 1.7 The Guidance sets out a number of conditions and prescriptive steps that must be satisfied in order to incorporate during the incorporation window (explained below) and avoid a pensions debt falling due.

- 1.8 Standard documentation is appended to the Guidance which is intended to streamline the process.

What is an incorporation window and why is it needed?

- 1.9 Each year the SUSS is able to re-open to the build-up of benefits on a limited basis and for a temporary period.
- 1.10 This temporary re-opening is needed for unincorporated unions which currently participate in the SUSS as they transition to incorporated union status. Most importantly, it ensures that they can incorporate without a significant pensions debt becoming due on the exit of the unincorporated union from the SUSS.
- 1.11 In 2023 the temporary re-opening will be between **3 July 2023 and 30 September 2023** (the "**Incorporation Window** ").
- 1.12 If the incorporation process outlined in this briefing note and the Guidance is not followed there is the risk of a significant pensions debt being inadvertently triggered, which is immediately owed by the exiting employer to the SUSS. This is something no one wants to happen in this context.
- 1.13 It is therefore in the interests of the unions, the SUSS Employers and the SUSS Trustees to ensure that the incorporation process outlined in this briefing note and the Guidance is strictly followed.
- 1.14 We recommend that any union which is considering incorporating takes its own independent legal advice, given the complexity of the issues and to ensure compliance with the incorporation process. However, it is also possible for the SUSS Trustees' solicitors to act for the unincorporated union and the incorporated union in this process. More detail on this is set out at 5.4 below.

2 2023 INCORPORATIONS

Summary of conditions required as part of incorporation process

- 2.1 SUSS will re-open during the Incorporation Window to permit incorporations. The conditions are as follows:
 - (a) the unincorporated union and the incorporated union will each employ one active member of SUSS. This will require the incorporated union to enter into a deed of admission at an early stage in the process, confirming the terms of its participation in SUSS;
 - (b) the employees should be deferred members of SUSS who are still employed by the unincorporated union. Where this is not possible (i.e. they are an employee but have not previously been a SUSS member), an additional administration charge (£150.00 plus VAT per member) will be levied as part of the overall fees for the exercise, as the scheme administrators will be required to set up new member records;

- (c) the unincorporated union and the incorporated union must pay £33 per month in relation to the additional nominal benefits to be earned by the two active members during the Incorporation Window;
 - (d) there must be no requirement on the two active members of SUSS to contribute to SUSS; and
 - (e) if one of the active members dies in this period, only death in deferment benefits will be payable.
- 2.2 In addition, the prescriptive steps set out in the Guidance must be followed, so that SUSS Employers can avoid a pensions debt arising in relation to SUSS.
- 2.3 Importantly:
- (a) incorporated unions must remain participating employers in SUSS for the duration of the Incorporation Window; and
 - (b) incorporated unions must not cease to employ active members at a time when another incorporated union continues to employ active members. However, incorporated unions may join SUSS at any time between 3 July 2023 and 1 August 2023. Key is that the deed of admission confirming the incorporated union's participation in SUSS becomes effective before the effective date of the deed of transfer (whereby the assets and liabilities of the unincorporated union are transferred to the incorporated union).
- 2.4 All incorporated unions must cease to participate simultaneously. A pensions debt will not become due to SUSS if all incorporated unions stop participating at exactly the same time. This will occur when SUSS re-closes to new members and the future build-up of benefits at the end of the Incorporation Window (i.e. on 30 September 2023).
- 2.5 It is not essential for the transfer of assets and liabilities from the unincorporated unions to the incorporated unions to occur at the same time.

3 2023 TIMETABLE

- 3.1 Because of the risk of a pensions debt arising if the prescriptive steps are not followed, it is vital that 2023 incorporations are tightly coordinated.
- 3.2 SUSS Employers wishing to incorporate in 2023 must therefore do the following:
- (a) **unincorporated unions wishing to incorporate must write to the NUS and the SUSS Trustees by no later than 12 June 2023 requesting that SUSS re-opens** using the template letter 1AZ at Appendix A. This letter can be sent electronically to SUSS@rosstrustees.com and Davina.keen@nus.org.uk.
 - (b) **incorporated unions must be established at the very latest by 30 June 2023.** Failure to ensure that an incorporated union is registered at Companies House by this

time could cause significant delays and increased costs for the SUSS Employer wishing to incorporate; and

- (c) **all incorporated unions must participate in SUSS for the duration of the incorporation Window.** They must not cease to participate prior to the closure of SUSS on **30 September 2023.**

- 3.3 A detailed indicative timetable of the 2023 incorporation process is appended to this note at Appendix B.

4 FURTHER PRACTICAL SUGGESTIONS

- 4.1 Precedent documents are set out in the Guidance. These include a number of legal documents which require a number of signatures from trustees of the unincorporated union and directors of the incorporated union.
- 4.2 To ensure that the 2023 incorporations run as smoothly as possible and to assist in getting the legal documents finalised and signed, SUSS Employers wishing to incorporate are further asked to follow a number of practical suggestions.

Signatories/availability

- 4.3 SUSS Employers should therefore ensure that:
 - (a) **appropriate signatories are available to sign the documents during the Incorporation Window.** Any potential absences should be notified to the SUSS Trustees as a priority;
 - (b) **delegated authority is considered.** On occasion, an unincorporated union requires a large number of signatures to make formal decisions and this can cause delays in the incorporation process. Where there are a large number of trustees on the board of the unincorporated union, delegated authority to a lesser number should be considered either:
 - (i) under section 333 Charities Act 2011; or
 - (ii) pursuant to a power in the constitution of the unincorporated union.

Any trustees with delegated authority must be notified to the SUSS Trustees;

- (c) **Any changes to the board of trustees of the unincorporated union and the directors of the incorporated union during the Incorporation Window must be notified to the SUSS Trustees as soon as reasonably practicable.**

Information gathering

- 4.4 Under step 2 of the process (as set out in the Guidance) the SUSS Trustees request detailed information to be provided in hard copy format from the unincorporated union to enable them to form a view as to whether the restructuring test is satisfied. The process is considerably easier if this information is collated quickly in advance and shared with the SUSS Trustees as soon as possible.
- 4.5 The information is also used to draft legal documents such as the deed of admission which formally enables the incorporated union to participate in SUSS. If there are inaccuracies in the information provided to SUSS Trustees then there will be inaccuracies in the legal documentation. This could cause further delay and increased costs.
- 4.6 The SUSS Trustees therefore ask that SUSS Employers ensure that they provide accurate and full information to the SUSS Trustees in order to make the process as streamlined as possible.

5 COSTS

- 5.1 The SUSS Trustees can allocate the costs they incur in relation to the incorporation process to the incorporated union.
- 5.2 The SUSS Trustees' legal costs for dealing with incorporations in 2023 is **estimated to be £7500 per union excluding VAT**. This assumes that the unincorporated union and the incorporated union adopt the prescribed procedure set out in the Guidance and this briefing note and no substantial amendment is made to the precedent documentation.
- 5.3 Further work incurred by the SUSS Trustees' solicitors, Gowling WLG; and or additional support/guidance requested from the SUSS secretariat team will be charged at the prevailing hourly rate and this will be charged in addition to the basic cost.
- 5.4 SUSS Employers will also be responsible for their own solicitors' costs when obtaining advice. The solicitors of SUSS Trustees, Gowling WLG, may be able to act for both the incorporated union and the unincorporated union as long as no conflict of interest arises, and the incorporated union and unincorporated union perform a straightforward 'one to one' restructuring.
- 5.5 Contact details and details of Gowling WLG's charging structure can be provided separately.
- 5.6 The unincorporated union and incorporated union will also need to agree to pay the cost of the accrual of future benefits in SUSS earned by the two active members for the duration of the Incorporation Window. The SUSS Actuary has indicated that for 2023 this will be £33 per month for each £1 of pension so the cost for the whole of the Incorporation Window will be £495 for each member.

APPENDIX A

TEMPLATE LETTER TO NUS AND SUSS TRUSTEES

STEP 1AZ - APPLICATION

To be sent on the headed note-paper of the unincorporated union – can also be sent by email to Davina.keen@nus.org.uk and SUSS@rosstrustees.com

National Union of Students (United Kingdom) c/o Davina Keen Membership Director Ian King House Snape Road Macclesfield Cheshire SK10 2NZ	The trustees of the Students' Union Superannuation Scheme c/o Hannah Cosgrove Ross Trustees Limited Westgate House 9 Holborn London EC1N 2LL
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[insert date] 2023

Dear Sirs

Proposed incorporation of [insert name of unincorporated union]

For the purposes of this letter, the following terms have the following meanings:

incorporated union	[insert name of new corporate body]
incorporation date	[insert scheduled incorporation date]
NUS	National Union of Students (United Kingdom)
SUSS	Students' Union Superannuation Scheme
SUSS Rules	Definitive Trust Deed and Rules made between NUS and the trustees named therein dated 31 March 2008 (as amended)
unincorporated union	[insert name of unincorporated association]

Please be advised that the unincorporated union intends to incorporate by transferring all of its assets and liabilities to the incorporated union. The unincorporated union will then be wound up. The incorporation is scheduled to take effect from the incorporation date.

We request that pursuant to rule 1 of the SUSS Rules, NUS (with the consent of the SUSS trustees) re-opens SUSS temporarily to the future accrual of benefits between **3 July 2023 and 30 September 2023**.

We look forward to hearing from you.

Yours faithfully

For and on behalf of the [insert name of unincorporated union]

APPENDIX B

STEPS TO BE TAKEN

AND TIMETABLE

Step	Summary	Timing	Description of steps	Responsibility
Step 1AZ	Application to re-open SUSS	No later than 12 June 2023 Step 1AZ letter to be received by NUS and SUSS Trustees	Unincorporated union asks NUS and SUSS Trustees to re-open SUSS to the future accrual of benefits on a temporary basis between 3 July 2023 and 30 September 2023 Step 1AZ letter to be submitted in the form attached at Appendix A. It can be submitted electronically to SUSS@rosstrustees.com and Davina.keen@nus.org.uk	Unincorporated union
Step 1A	Direction from NUS	No later than 19 June 2023	NUS directs SUSS Trustees to re-open SUSS to the future accrual of benefits on a temporary basis for 13 weeks between 3 July 2023 and 30 September 2023 to allow unincorporated union to employ one active member and incorporated union to join SUSS as a participating employer and employ another active member . SUSS Trustees subsequently consent to NUS' direction to re-open SUSS on 3 July 2023 and to permit the relevant unincorporated unions to	NUS

Step	Summary	Timing	Description of steps	Responsibility
			participate in SUSS during the Incorporation Window.	
Step 1	Application to join SUSS, agreement to meet SUSS Trustees' costs and to ask whether restructuring test is satisfied.	No later than 30 June 2023	<p>Incorporated union to be in existence and formally registered at Companies House. SUSS Trustees will <u>not</u> be able to confirm any decision until the incorporated union is in place.</p> <p>Unincorporated union applies to NUS and SUSS Trustees for incorporated union to join SUSS as a participating employer and asks whether restructuring test would be met on incorporation.</p> <p>Unincorporated union agrees that either it or the incorporated union will meet SUSS Trustees' costs incurred in incorporation.</p> <p>Unincorporated union to compile information in anticipation of SUSS Trustees' information request (by reference to precedent in Step 2 of the Guidance).</p>	<p>Unincorporated union</p> <p>Incorporated union</p>
Step 2	Request for information	No later than 17 July 2023	SUSS Trustees ask unincorporated union and incorporated union to provide information to them and indicate in principle, agreement to give certain warranties regarding the incorporation. The draft transfer deed must be shared with the SUSS	SUSS Trustees

Step	Summary	Timing	Description of steps	Responsibility
			Trustees at this stage. (It will be signed later in the process - see Step 9.)	
Step 3	Participation	No earlier than 3 July 2023 and no later than 1 August 2023	<p>Incorporated union becomes a participating employer in SUSS and starts to employ one active member. This necessitates a deed of admission and special members' letters to be agreed and signed.</p> <p>SUSS Trustees must notify the Pensions Regulator of the admission of the incorporated union to SUSS via Exchange, the Pensions Regulator's on-line data submission system.</p>	<p>NUS</p> <p>SUSS Trustees</p> <p>Incorporated union</p>
Step 3A	Employment of active members	<p>With effect from 3 July 2023</p> <p>(unincorporated union)</p> <p>No earlier than 3 July 2023 and no later than 1 August 2023</p> <p>(incorporated union)</p>	<p>Unincorporated union and incorporated union must employ at least one active member each for remainder of Incorporation Window.</p> <p>No cessation of active membership for both active members employed by the unincorporated union and the incorporated union must occur until SUSS Trustees formally re-close SUSS on 30 September 2023 (refer to step 10A overleaf).</p>	<p>Incorporated union</p> <p>Unincorporated union</p>

Step	Summary	Timing	Description of steps	Responsibility
Step 4	Provision of information	ASAP after SUSS Trustees' request for information (Step 2) and in any event no later than 1 August 2023	<p>Unincorporated union and incorporated union provide requested information to SUSS Trustees.</p> <p>Unincorporated union and incorporated union must ensure that all information on the form is accurate and information requested is provided in full.</p> <p>If there are any changes to the trustees of unincorporated union or directors of incorporated union these must be notified to SUSS Trustees.</p> <p>Trustees of the unincorporated union who have received delegated authority under section 333 Charities Act 2011 must be notified to SUSS Trustees.</p>	<p>Unincorporated union</p> <p>Incorporated union</p>
Step 5	Consultation	Between 1 August 2023 and 15 August 2023	SUSS Trustees consult with unincorporated union and incorporated union regarding the restructuring test and request any further information required.	<p>SUSS Trustees</p> <p>Unincorporated union</p> <p>Incorporated union</p>
Step 6	Resolution	No later than 21 August 2023	SUSS Trustees decide whether they are satisfied that the restructuring test is met – the decision is delegated to two of the SUSS Trustees who have also received delegated	SUSS Trustees

Step	Summary	Timing	Description of steps	Responsibility
			authority to review the Step 2 information.	
Step 7	Notification of SUSS Trustees' decision	No later than 21 August 2023	SUSS Trustees notify unincorporated union and incorporated union of their decision	SUSS Trustees
Step 8	Notification to Pensions Regulator	No later than 25 August 2023	Unincorporated union notifies the Pensions Regulator that it will shortly cease to carry on business in the UK because of its proposed incorporation	Unincorporated union
Step 9	Incorporation and transfer	No later than 2 September 2023	Incorporated union takes over responsibility for <u>all</u> of the unincorporated union's assets, employees (excluding one active member who is already employed by incorporated Union), SUSS members and SUSS liabilities under a legally enforceable agreement. A draft agreement must be provided for SUSS Trustees' review as part of the information request at Step 2.	Unincorporated union Incorporated union
Step 10	Notification of completion	No later than 15 September 2023	Unincorporated union and incorporated union notify SUSS Trustees that incorporation and transfer is completed and date of completion	Unincorporated union Incorporated union
Step 10A	SUSS re-closes	30 September 2023	SUSS re-closes to the future accrual of benefits after the expiry of 13 weeks	SUSS Trustees