Claim Form

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In the High Court of Justice
Business and Property Courts

Fee Account no.	
Help with Fees - Ref no. (if applicable)	H W F - -

For court use only

Claim no.	CR-2021-001966
Issue date	

SEAL

Claimant(s) name(s) and address(es) including postcode

(1) Lawrence Ewan McGaughey, School of Law, King's College, London, Somerset House, Strand, London, WC2R 2LS
(2) Neil Martin Davies, 32 Codrington, Bristol, BS78ET

Defendant(s) name and address(es) including postcode

1) Universities Superannuation Scheme Limited
(2) The Individuals Listed at Appendix 1 to the Claim Form
(3) The Individuals Listed at Appendix 2 to the Claim Form

Brief details of claim

This is a multiple Derivative Claim. See Particulars of Claim

If the claimant seeks an order that the defendant company or other body concerned indemnify the claimant against liability for costs incurred in the permission application or the claim, this should be stated in the permission application or claim form or both, as the case requires.

Value

The Claimants seek declarations, injunctions and other relief.

You must indicate your preferred County Court Hearing Centre for hearings here *(see notes for guidance)*

N/A

Defendant's name and address for service including postcode

Royal Liver Building,
Liverpool
L3 1PY

	£
Amount claimed	
Court fee	£569
Legal representative's costs	To be assessed
Total amount	

Claim No.	

Does, or will, your claim include any issues under the Human Rights Act 1998? ☒Yes ☐No

Particulars of Claim (attached)(~~to follow~~)

Statement of Truth

I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

☒ **I believe** that the facts stated in this particulars of claim are true.

☐ **The Claimant** believes that the facts stated this particulars of claim are true. **I am authorised** by the claimant to sign this statement.

Signature

☒ Claimant

☐ Litigation friend (where judgment creditor is a child or a patient)

☐ Claimant's legal representative (as defined by CPR 2.3(1))

Date

Day	Month	Year
26	October	2021

Full name
Lawrence Ewan McGaughey

Name of claimant's legal representative's firm
N/A

If signing on behalf of firm or company give position or office held
N/A

Claimant's or claimant's legal representative's address to which documents should be sent.

Building and street

School of Law, King's College, London

Second line of address

Somerset House East, Strand

Town or city

London

County (optional)

Postcode

W	C	2	R	2	L	S

If applicable

Phone number

07725038138

Fax phone number

DX number

Your Ref.

Email

ewan.mcgaughey@kcl.ac.uk

Claim No. ______________

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF UNIVERSITIES SUPERANNUATION SCHEME LIMITED

MULTIPLE DERIVATIVE CLAIM

BETWEEN:

1. LAWRENCE EWAN McGAUGHEY
2. NEIL MARTIN DAVIES

Claimants

and

(1) UNIVERSITIES SUPERANNUATION SCHEME LIMITED
(2) THE INDIVIDUALS LISTED AT APPENDIX 1 TO THE CLAIM FORM
(3) THE INDIVIDUALS LISTED AT APPENDIX 2 TO THE CLAIM FORM

Defendants

PARTICULARS OF CLAIM

INTRODUCTION

1. These are the Particulars of Claim of a Multiple Derivative Action brought under common law principles analogous to those set out in Chapter 1 of Part 11 of the Companies Act 2006 ("**CA06**") by the Claimants seeking relief on behalf of the First Defendant, Universities Superannuation Scheme Limited (the "**Company**").

Summary of the claim

2. Without prejudice to the detail set out below, the Claimants claim in summary that:

   A. (Claim 1) the current and former directors including a shadow director of the Company have been in breach of their statutory duties under the CA06 and/or fiduciary duties particularised below in certain ways concerning the valuation of the Scheme's assets which amount to a failure to act properly within the directors' powers, and a failure to promote the success of the Company whose purpose is to protect the interests of the beneficiaries of the Universities Superannuation Scheme (the "**Scheme**") of which the Company is the corporate trustee. As a result, the Company has suffered and will continue to suffer loss.

B. (Claim 2) by reason of the matters alleged in Claim 2, the change in benefit and contribution structure proposed by the current and former directors including a shadow director of the Company amounts to discrimination on the grounds of sex and/or age and/or race and has thus exposed or will expose the Company to claims for discrimination such as to amount to a breach of the statutory and/or fiduciary duties of the Directors and/or shadow director.

C. (Claim 3) – in breach of statutory and/or fiduciary duty and/or negligently, the current and former directors including a shadow director of the Company have overseen dramatic increases in internal and external asset manager costs which the Claimants calculate as a 1318% increase for internal asset manager costs since 2008 and 320% increase in total operating costs.

D. (Claim 4) – the failure of the current and former directors including a shadow director of the Company to create a credible plan for disinvestment from fossil fuel investments (as defined below) has prejudiced and will continue to prejudice the success of the Company.

<u>The Company and the University Superannuation Scheme</u>

3. The Company was incorporated under the Companies Act 1948 on 18 April 1974 as a private company limited by guarantee with registered number 1167127 and whose registered office is at Royal Liver Building, Liverpool L3 1PY.

4. The Company is and at all times has been the corporate trustee and administrator of the Scheme.

5. The Scheme was established by Trust Deed dated 2 December 1974 for the purpose of providing under irrevocable trusts superannuation benefits for academic and comparable staff in universities and other higher education institutions in the United Kingdom.

6. Membership of the Scheme is offered by i) all "pre-92 universities" (i.e. institutions which were granted university status prior to the Further and Higher Education Act 1992) and related institutions, ii) some "post-92 universities" (i.e. institutions which were granted university status pursuant to the Further and Higher Education Act 1992) on a specific, limited basis and iii) several other organisations associated with the higher education sector.

7. The Scheme is a hybrid multi-employer scheme with 343 participating employers and a total of approximately 476,000 active, deferred and pensioner members. It currently provides final salary defined benefits, career revalued defined benefits and defined contribution benefits as follows:

   A. Accrued entitlement up to and including 31 March 2016 is calculated on a final salary basis using pensionable salary and pensionable service immediately prior to this date. From that date, these accrued benefits revalue in line with increases in official pensions.

   B. Defined benefit accrual from 1 April 2016 onwards is on a Career Revalued Benefit basis for all members with a pension accrual of 1/75.

   C. For pensionable service from 1 October 2016 members build up Career Revalued defined benefit rights up to a salary threshold set for each academic year. The threshold for 2016/2017 was £55,000 and has increased annually with CPI. The threshold for 2021/22 is £59,883.65. On salary above that level, members build up Defined Contribution rights. Both members and employers contribute to the Scheme by a percentage of the member's annual salary. Historic, current and proposed contribution rates are set out below.

D. Members can opt to pay additional contributions into the Defined Contribution section of which the first 1% is matched by the employer. As detailed below, the matching facility was removed with effect from 1 April 2019.

As detailed below, there are proposals to alter this current benefit structure.

8. The Scheme is one of the, if not the largest, private occupational pension schemes in the UK by assets. As at July 2021 it had approximately £87.8 billion assets under management.

9. The Scheme is currently governed by Rules up to and including the Eleventh Deed of Amendment dated 30 March 2020 as subsequently amended from time to time (the "**Rules**").

The role and business of the First Defendant

10. The Company's purpose as specified with Companies House is pension funding (65300).

11. Pursuant to Article 71(1) of the Company's Articles of Association adopted by Written Resolution on 12 February 2020 (the "**Articles of Association**") "*the objects for which the Company is established are [to] undertake and discharge the office of trustees... for the benefit of university teachers or other staff of comparable status of universities and similar establishments*". This repeated the previous articles and confirmed the object which had existed ever since the incorporation of the Company.

12. The Company's business model focuses on maximising value for money for the Scheme's members and employers. The Company generates neither profit nor loss and recovers its costs in accordance with the Scheme Rules. As a company limited by guarantee as opposed to shareholding, the Company has no shareholders. Pursuant to Article 2 of the Articles of Association a person appointed as a Director automatically becomes a Member of the Company.

13. The Company is regulated by and is authorised and supervised under the Master Trust regime by the Pensions Regulator.

14. Pursuant to article 26(1) of the Articles of Association, the Directors must number between ten and twelve, and consist of:

    a) Four Directors from Universities UK "(UUK") which is a company limited by guarantee registered as a charity under number 1001127. UUK is the collective voice of over 100 universities
    b) Three Directors from University and College Union ("**UCU**"), a trade union representing over 130,000 academics and support staff across the UK, of whom not more than two may be persons who are not pensioner members (as that expression is for the time being defined by the rules of the Scheme).
    c) Not less than three nor more than five Independent Directors.

15. Pursuant to article 28, the Independent Directors are appointed by the board.

16. Pursuant to article 29(3), the sole power to remove directors from the board is vested in the board of directors. The procedure for removal of directors of the Company had previously been altered by a written resolution of 14 December 2018 to eliminate the ability of UUK or UCU to remove Directors that they had appointed, in contrast to the articles from special resolutions passed on 29 March 2012 and 12 October 2012.

17. The individuals at Appendix 1 are, at the current time, the Directors of the Company. The Board is responsible for ensuring the Scheme is fit for purpose, and that it offers members good support and service.

18. The individuals at Appendix 2 are former Directors of the Company who were in post at times relevant to matters set out below.

19. USS Investment Management Limited (the "**Subsidiary**") is a wholly-owned subsidiary of the Company which was incorporated on 4 June 1997 and registered under number 03380864 whose registered office is at Royal Liver Building, Liverpool L3 1PY.

20. The Subsidiary is regulated by the Financial Conduct Authority. Its principal activity is to provide investment management and advisory services to the Company.

21. Together the Company and Subsidiary are referred to below as "**the Group**".

22. Mr William Galvin, the Chief Executive Officer and a Director of the Subsidiary since 1 August 2013, is and at all material times was a shadow director of the Company within the meaning of section 251 CA06 given that, as set out below:

    A. Mr Galvin has held himself out as the Group Chief Executive and acted on behalf of the Company.

    B. Mr Galvin has directed how the Directors of the Company were to and are to act.

    C. Further or alternatively Mr Galvin is one of the persons who have so acted.

    D. The Directors acted in accordance with Mr Galvin's directions and were accustomed so to act.

    References below to Directors include the shadow director unless otherwise stated.

<u>The Claimants</u>

23. The First Claimant is employed by King's College London, as a Reader specialising in, inter alia, law. He commenced membership of the Scheme on 1 October 2008.

24. The Second Claimant is employed by the University of Bristol as a senior research fellow in the Bristol Medical School specialising in statistical epidemiology. He commenced membership of the Scheme on 1st October 2006.

25. The Claimants are suitably interested representatives to bring these proceedings for, inter alia, the following reasons:

    A. As previously stated, the Company's purpose and object is to exist and act for the benefit of the Scheme Members who have given consideration for their pension rights. Failing to act in the interests of the Company involves, by definition, failing to act in the interests of the Scheme members.

    B. There is no prospect that the directors of the Company (whether with or without the shadow director) will bring the claim not least because of the allegations against them.

C. For the same reason, and because the directors are the only members of the Company, there are no members of the Company who would bring the claim or would resolve to remove directors under s168 CA 06.

D. The Scheme members are beneficially entitled to the assets of the Scheme held on trust by the Company.

E. In the circumstances, absent the Claimants (or other individuals acting in their stead), there would be no prospect of the claim being brought and the wrongs alleged below being righted.

Governance of the Scheme

26. The Company as Trustee has certain unilateral powers, such as the power to amend the Rules (Rule 79). To balance against this, the employers have representation in the form of UUK which, as stated above, is the collective voice of over 100 universities and has certain roles under the Rules.

27. Under Rule 6.6 of the Rules (all underlined terms in this and other rules set out below are italicised in the original):

> *UUK* is the person nominated by the *rules* to act as the representative of the *employers* for the purposes of the consultation required by the *trustee company* with the *employers* under section 229 of *PA04*.

28. Members have a voice through UCU which is, as stated above, a trade union representing over 130,000 academics and support staff across the UK.

29. The Joint Negotiating Committee ("**JNC**") is established and constituted in accordance with Rule 64 of the Scheme Rules. Pursuant to Rule 64.2.1 the JNC consists of 11 persons, 5 of whom shall be UUK appointees and 5 of whom shall be UCU appointees. There shall be one independent member to act as chair.

30. Pursuant to Rule 64.1 the functions of the JNC include:

> *64.1.1 to approve any amendment to the rules proposed by the trustee company;*
>
> *64.1.2 to initiate or consider amendments to the rules;*
>
> *64.1.3 to consider any amendments to the rules proposed by the advisory committee arising out of the operation of the rules; and*
>
> *64.1.4 to decide on contributions increases or decreases and/or benefits changes under sub-rule 64.10 (Cost Sharing).*

Statutory and other duties owed by the Company's directors

31. During the period in question the directors of the Company are and have been those individuals listed in Appendix 1 and Appendix 2 as applicable.

32. Pursuant to ss. 171, 172, 173, and 175 CA06 and analogous concepts in equity or otherwise, the directors of the Company and the shadow director owed the Company, inter alia, the following statutory and/or other duties:

    A. A duty to act properly in accordance with their powers.

    B. A duty to promote the success of the company for the benefit of members.

    C. A duty to exercise independent judgment.

    D. A duty not to put themselves in a position of conflict.

CLAIM 1 – AS-AT VALUATION DATE

Legislative framework

33. The statutory requirements on scheme funding are contained in Part 3 of the Pensions Act 2004 ("**PA04**") and associated legislation. Of relevance:

A. Pursuant to section 222 PA04 the Scheme was and is subject to a requirement (defined as the "**statutory funding objective**") that it must have sufficient and appropriate assets to cover its technical provisions, the amount required, on an actuarial calculation, to make provision for the Scheme's liabilities.

B. Pursuant to section 223 PA04, the Company as trustee must prepare and, from time to time, review and, if necessary, revise a policy for securing that the statutory funding objective is met, defined as a "statement of funding principles".

C. Pursuant to section 224 PA04 the Company must, as trustee, obtain actuarial valuations at intervals of not more than three years (if actuarial reports are obtained for intervening years), valuing the Scheme's assets and calculating its technical provisions.

34. Actuarial valuations may help determine:

A. The amount of money required to be held within the Scheme in respect of the Scheme liabilities, i.e. the benefits built up by members at the valuation date.

B. A plan for making up the shortfall if the Scheme's liabilities as calculated exceed its assets (the "**deficit**") which must, under section 226(3), be appropriate having regard to the nature and circumstances of the scheme.

C. The contributions needed to cover the benefits that active members will build up in the future.

35. Amendments to the above provisions introduced by section 123 of and Schedule 10 to the Pension Schemes Act 2021 which was granted Royal Assent on 11 February 2021 are not yet in force.

<u>Relevant Scheme Rules</u>

36. Rules 76 of the Scheme Rules provides for triennial valuations in accordance with Part 3 of the PA04 and the mechanism by which contribution increases to be paid by members and/or employers are determined and by whom.

37. Rule 76 .1 of the Rules states:

There shall be an actuarial investigation of the scheme by the actuary appointed for that purpose at intervals of not more than 3 years. Following each actuarial investigation, the actuary shall report to the trustee company on the financial condition of the scheme and shall make such recommendations as the actuary shall think fit, including as to the contributions to be payable by the employers under rule 6 (Ordinary employer contributions).

(All words in underline in this and all other quotations of the rules in the original)

38. Rule 76.4 states:

In the event that:

76.4.1 the trustee company determines on or after the effective date, on actuarial advice, following the actuarial investigation, that an increase in the aggregate contribution rate payable by employers is required towards the cost of benefits under the fund, whether in respect of the cost of providing for such benefits for future service and/or in respect of the cost of remedying any deficit in the fund; and

76.4.2 the JNC does not decide, within a period of 3 months from the date on which the actuary's report on the actuarial investigation under sub-rule 76.1 is received by the JNC, or such longer period as the trustee company may allow, how the cost of that increase is to be addressed under sub-rule 64.10;

then, if an increase in the aggregate contribution rate payable by employers is required towards the cost of such benefits, the rate of matching contributions payable by the employers to members' DC accounts under sub-rule 6.3 is to be prospectively reduced to the extent necessary, as determined by the trustee company, to meet that increase.

<u>Background events – previous change in contribution rates following the 2014, 2017 and 2018 valuations</u>

39. The Scheme triennial valuation process has historically been initiated by the Company one to two years ahead of the valuation date, which process includes a series of assessments of and consultations on factors that will be taken into account in determining the valuation assumptions (for example an assessment of the strength of the employer covenant and a consultation with sponsoring employers on their appetite for risk and technical provisions).

40. The Scheme Funding Report of the Actuarial Valuation as at 31 March 2014, produced on behalf of the Company by Mercer in or about July 2015 (the "**2014 Valuation**") led to the 2016 changes to the benefit structure of the Scheme set out above at paragraph 7.

41. In the process of the Company's consultation process during the preparation for the 2017 actuarial valuation, First Actuarial, instructed by UCU, provided a Report on the Technical Provisions Consultation dated 15 September 2017. This report, which was expressly prepared in accordance with actuarial standards, expressed the views that:

    A. The current contribution rates were prudent and should be continued.

    B. The likelihood that the Scheme could achieve the break-even return (the return required to fund the past service benefits without any additional deficit contribution) was high, being well below the expected returns on equities and property.

    C. The Company's low risk approach gave rise to the prospect of a vicious circle which undermined the rationale behind it. The employers wished to reduce risk to which the Company responded by proposing a higher funding target and increased contributions in order supposedly to reduce the employers' exposure to risk but, in the process, achieving something which none of the employers wished for, namely increased costs. The Company provided a response dated 17 November 2017 in the name of Mr Galvin which expressed the position that "*the approach advocated by First Actuarial is [not] consistent with the principles underpinning the prudent financial management of the scheme's liabilities.*"

42. On 5 December 2018, as part of the 2017 actuarial valuation process, the Company wrote to UUK with a draft Recovery Plan and Schedule of Contributions. The Company's proposals included setting deficit recovery contributions at 6%.

43. In or about 2019 UUK provided a response on behalf of employers to the Company's proposals expressing the views that:

   A. Employers did not believe that the Company demonstrated adequate justification for setting deficit recovery contributions at 6%.

   B. The contribution levels due from October 2019 had significant financial implications for employers and members, potentially undermining the long-term future of some institutions and increasing the number of members opting-out respectively.

   C. Employers questioned the weight given by the Company to recent market movements in the proposals, given the enduring nature of the scheme and the covenant provided to the scheme by employers.

44. As detailed below, the Company's response to the employers' concerns about the level of risk, was to adopt a more cautious approach to investment risk which resulted in an increase in contributions.

45. According to the Scheme Funding Report of the Actuarial Valuation as at 31 March 2017, produced on behalf of the Company by Mercer in or about January 2019, (the "**2017 Valuation**") total Defined Benefit assets amounted to £66.0 billion with £67.5 billion total liabilities (89% funding level, shortfall of £7.5 billion). At that time employer contributions were 18% of a member's salary and member contributions were 8% of salary.

46. Following the 2017 Valuation, the following changes were announced for the Scheme:

   A. Removal of the 1% employer DC match with effect from 1 April 2019.

   B. A planned phased increase in employee contributions from 8% to 11.4% over the period up to 1 April 2020.

C. A planned phased increase in employer contributions from 18% to 24.2% over the period up to 1 April 2020.

(i.e. total of 35.6%)

47. According to the Scheme Funding Report of the Actuarial Valuation as at 31 March 2018 but produced 16 September 2019 (the "**2018 Valuation**") total Defined Benefit assets amounted to £63.7 billion with £67.3 billion total liabilities (95% funding level, shortfall of £3.6 billion).

48. Notwithstanding the reduction in the estimated deficit, the 31 March 2018 valuation brought about the following increase to contributions with effect from 1 October 2019:

A. Employer contributions increased from 19.5% to 21.1%.

B. Member contributions increased from 8.8% to 9.6%.

(i.e. total of 30.7%)

49. As a result of the 2018 valuation process, and quite apart from the matters described below, further contributions were scheduled to take place from 1 October 2021:

A. Employer contributions are due to increase from 21.1% to 23.7%.

B. Member contributions are due to increase from 9.6% to 11.0%.

(i.e. total of 34.7%)

50. Pursuant to Part 3 of PA04, the next actuarial valuation report which the Company had to provide is up to three years after the previous as at 31 March 2018 date, i.e. as at 31 March 2021. At the Company's instigation, and over and above this requirement, the Scheme has undergone an actuarial valuation as at 31 March 2020 which was finalised in September 2021. The Company undertook to undergo a valuation as at 31 March 2020 in order to avoid the implementation of the further contribution increases set out above at paragraph 49..

Current proposals and decisions leading to concerning the 2020 actuarial valuation

51. Against a background of industrial action by members of the Scheme, in or about late March 2018 the Joint Expert Panel ("**JEP**") was set up by UCU and UUK who commissioned the JEP to review the basis for the Scheme 2017 Valuation assumptions and associated tests (the 2017 Valuation not yet having been finalised).

52. The JEP provided two reports, the first in September 2018 and the second in December 2019. As the first report notes, the JEP was asked to take into account the following factors:

    a. The unique nature of the Higher Education sector.

    b. Considerations of intergenerational fairness and equality.

    c. The need to strike a fair balance between stability and risk.

    d. The current legal and regulatory framework.

53. The JEP developed five principles against which adjustments could be considered:

    a. A re-evaluation of the employers' willingness and ability to bear risk – this would mean re-assessing the reliance on sponsor covenant.

    b. Adopting a greater consistency of approach between the 2014 and 2017 valuations – this would mean changing the approach to deficit recovery contributions.

    c. Achieving greater fairness and equality between generations of Scheme members – this would mean smoothing future service contributions.

    d. Ensuring the valuation uses the most recently available information – this would mean using latest available data and taking account of recent investment considerations and outcomes.

e. Taking the uniqueness of the Scheme and the HE sector more fully into account.

54. The JEP recommended adjustments to the methodology to enable the 2017 valuation to be concluded, whilst also enabling the JNC to consider any necessary short- and longer-term reforms to the Scheme. As stated above, the 2017 Valuation was concluded in January 2019.

55. Thereafter the JEP commenced work for what became its second report published in December 2019 which considered future valuations. The key conclusion/theme is that:

> "*the valuation, whilst important, is only one part of the overall stewardship of the Scheme. Of much greater importance is the process that underpins the valuation and the governance of the Scheme itself. It is these which drive the culture and tone of the interaction between the Stakeholders and therefore the way in which the valuation is conducted, and its outcome enacted.*
>
> *Currently in USS, it appears to be the other way around: the valuation and its methodology drive all else, including the relationship between the Stakeholders and between the Stakeholders and the Trustee. As we said in our first report, this leads to a valuation outcome which is 'test-driven'. The relationship issues appear to be reinforced by the Scheme Rules which do not foster a cooperative environment within which the Stakeholders can work well together.*"

56. The JEP's stated overriding aim was the long-term sustainability of the Scheme and it made recommendations on the valuation methodology. The JEP's stated belief was that "*a failure to take forward the recommendations in this report would mark a failure for members, employers and the sector*."

57. Following the JEP reports, on 9 March 2020 the Company published a technical discussion document for Scheme sponsoring employers entitled "*Methodology and risk appetite for the 2020 valuation*" setting out the high-level principles established:

A. The level of risk must be acceptable.

B. Long-term *and* short-term perspectives are important (emphasis in original).

C. Intergenerational fairness should be considered.

58. The discussion document set out a proposed new methodology which indicated an estimated technical provisions deficit of £5.1 to £9.0 billion depending on the strength of the employer covenant (a reduction from "strong" to "tending to strong" being said to reduce the period over which the covenant could be expected from 30 years to 20 years).

59. §1.2 of the Discussion document stated (emphasis added):

> "*We need to re-assess the Scheme's funding and the plan to improve it.*
>
> *Economic conditions during the 2018 valuation were challenging and volatile. So, we committed to carry out another valuation in 2020 – <u>a year earlier than the law requires.</u>*
>
> *We will base the 2020 valuation on a 'snapshot' of the Scheme on 31 March 2020. If it shows that the Scheme might not have enough money, we must put a plan in place to improve its funding. The process itself will run well into 2021. The legal deadline for completing a valuation is 15 months after the 'snapshot' is taken (see Section 9).*"

60. The Company produced a document dated 28 August 2020, entitled "USS, *A consultation for the 2020 valuation: A consultation with Universities UK on the proposed methodology and assumptions for the Scheme's Technical Provisions*".

61. This document constituted the Company's formal consultation on the Technical Provisions (as opposed to the contributions or Recovery Plan). The document indicated a clear commitment to proceed with the 2020 valuation despite the absence of any legal requirement and the period of "*significant uncertainty*" given, inter alia, the pandemic's "*material adverse effect on the prospects for the global economy*." (Foreword). The Foreword also indicated that "*We will, of course, reflect on and give due weight to post-valuation experience as we consider your response to this consultation*."

62. At pp.27-28, it was stated that, based on the ostensibly "*deteriorating outlook for future investment returns*", there would be a "Single equivalent discount rate" (i.e. assumed future

investment returns of Scheme assets) of the Consumer Protection Index for inflation ("CPI") + 0.0%. As at August 2020, CPI was 0.2%.

63. The directors of the Company have failed to provide sufficient modelling behind their valuation assumptions, including the assumption of 0.0% growth under a tending-to-strong covenant.

64. The Company prepared a draft Rule 76.1 report which was provided to the TPR on 18 February 2021. TPR responded on 26 February 2021. This response contained, inter alia, the following:

> *However, in his initial advice on discount rate assumptions (report date 24 May 2020), the Scheme Actuary advised the Trustee to limit the discount rates derived 'mechanically' by applying confidence levels on the FBB [fundamental building block] return."*

65. On 3 March 2021 the Company published a 3 page "*USS briefing: Why we decided to proceed with the 2020 valuation*". The stated rationale for maintaining a 30 March 2020 valuation date was that:

> "*Firstly, TPR expressly cautioned trustees of schemes with valuation dates on or around 31 March 2020 against 'cherry-picking' more favourable dates in its 2020 Annual Funding Statement*."

66. Footnote 2 to this statement quotes TPR as follows:

> "*Trustees should consider very carefully why they believe [changing the valuation date] is in the best interest of their members and the impact of any such change on member security, for example if the current conditions prevail for a long period. If they decide to change the valuation date they should do so having <u>obtained and considered legal and actuarial advice,</u> and consider taking account of changes in the investment markets and employer's covenant since the new date of the valuation. <u>Trustees who take this decision can expect us to question their reasons for the change</u>.*" (Emphases added.)

67. The USS briefing continues:

> "*But, in any event, post-valuation date experience (positive or negative) will be considered in agreeing the funding assumptions and the Recovery Plan. This is consistent with TPR guidance and one of the core recommendations from the JEP's first report ('Ensuring the valuation uses the most recently available information').*"

68. The Company's Update on the 2020 Valuation dated 3 March 2021 states that "…*market conditions in early 2020, and their impact on the Scheme's funding position, is something we would have had to address even if we had not already made a commitment to hold a 2020 valuation. A valuation would have been required by 31 March 2021 at the very latest in any event*."

69. The Update predicted a technical provisions deficit of between £14.9 and £17.9 billion depending upon the three scenarios previously outlined in the draft Rule 76 report and proposed that, to remedy this, contributions must rise, or a deficit reduction plan through cuts to benefits is necessary. In summary the Company proposed inter alia that:

    a. Under scenario 1, with deficit recovery contributions assumed to be 19.2% of pay, it was "*difficult to envisage any meaningful defined benefit pension being provided under the hybrid structure*", with the result that members would only have defined contribution entitlements.

    b. Under scenario 2 "*Very significant changes would be required to both the defined benefit and defined contribution elements to maintain total contributions at 30.7%*." e.g. reduced the defined benefit salary threshold from £59,000 to £40,000.

    c. The accrual rate for career average salary could be reduced from 1/75 to 'between 1/155ths and 1/170ths' (under Scenario 2) or "between 1/100 and 1/115ths" (under Scenario 3).

70. Misleadingly, the Update went on to state:

"*In sharing these illustrations, we are not proposing a view on the most appropriate response in terms of contribution rates or benefit changes. These are primarily matters for UUK and UCU via the JNC*." (p.18)

71. By setting out alternative scenarios all of which cut pension benefits, the Directors framed the choice between options all of which were prejudicial to the interests of active members while ignoring the relevant consideration that Scheme assets had recovered from March 2020 to March 2021 to such an extent that assumptions on which the proposals were based no longer existed (even if they ever had been).

72. Contrary to the statement in the 3 March 2021 briefing, the Directors have apparently ignored the post 31 March 2020 Scheme experience documented in the Company's monthly Financial Management Plan Monitoring report (which is used by the Company to track the financial development of the Scheme) whereby the assets of the Scheme had more than recovered to the pre-pandemic level been completely restored, and more. According to the Scheme's FMP Monitoring bulletin of July 2021, the assets of the pension scheme by July 2021 had risen from £66.5 billion in March 2020 to £87.8 billion in July 2021: a rise of £21.3 billion: *FMP Monitoring – End July 2021*. This would largely if not completely remove the estimated £17.9 billion future deficit (in its worst-case scenario) This is contrary to the Company's approach in response to adverse market movements in October to December 2018 which the Company took into account when valuing the Scheme in January 2019 as at March 2017.

73. Nearly a year previously, on 7 September 2020, Mr Galvin in his capacity as Group Chief Executive, sent a note to heads of participating employers indicating that, if no agreement were reached between UUK and UCU via the JNC, the Company would require increased contributions from employers and employees to maintain current benefits. The note provided illustrative costs of continuing to offer the current benefits ranging from 29.4% to 37.6% of payroll which inclusive of deficit recovery payments would result in total contributions of between 40.8% and 67.9% of payroll.

74. On 31 August 2021, the JNC met to discuss UUK's proposals. The JNC chair used her casting vote to push through UUK proposals for cuts to pension benefits which are scheduled to come into force in April 2022. The impact of these cuts for an individual member depends on that member's income, age, gender and future inflation. The Claimants will seek to rely upon expert evidence in due course but anticipate that, assuming recent inflation experience, a member could see their overall pension benefits decrease by between 10 to 50%, depending on assumptions.

75. The Company has produced illustrations of how the proposed changes could affect members' pension. These illustrations are not comprehensive or necessarily accurate but indicate the extent of the diminution on members' deferred remuneration:

Name	Age	Salary	Current predicted annual pension	Proposed change predicted annual pension	% change
Aria	37	£30k	£17,250	£14,550	-16%
Bryn	43	£50k	£24,800	£20,330	-18%
Chloe	51	£70k	£30,800	£27,600	-10%

76. On the back of the proposed benefit reductions, in September 2021 it was proposed that revised contribution rises would take place from October 2021:

A. Employer contributions would increase from 21.1% to 21.4%.

B. Member contributions would increase from 9.6% to 9.8%.

(i.e. total of 31.2%)

77. The Company has accepted the JNC's proposals and will now proceed with a 60 day consultation with members in relation to the proposed changes to the Scheme benefit provisions.

78. In light of the above, the Directors on behalf of the Company are proceeding on the basis of a technical provisions deficit of between £14.9 billion to £17.9 billion and are currently committed to benefit reductions having previously indicated that contribution increases might be:

A. (On the most favourable assumptions) between 30.7% and 42.1% of pensionable salary.

B. (On the least favourable assumptions) up to 56.2% of pensionable salary.

79. On or about 30 September 2021 the 2020 Valuation was finalised. In the process of finalising the 2020 valuation in September 2021, the Company has assumed a discount rate of 0.29% growth in assets above CPI inflation for the next 30 years.

80. Contrary to various statements made previously, post-evaluation date experience was not considered in the Schedule of Contributions finalised on 30 September 2021 prepared pursuant to section 227 PA04 where the Scheme Actuary says in his concluding notes:

> "*Furthermore, I have taken no account of either adverse or beneficial outcomes that have become known to me since the effective date of the valuation*."

<u>Summary of the action of the Directors constituting breach of duty</u>

81. In the circumstances, at all material times since at least 2018 the Directors have:

A. Decided to maintain an "as at" 30 March 2020 valuation date despite:

A.I. the absence of any legal need for a valuation as at this date;

A.II. the unprecedented circumstances of the pandemic and its consequences on the performance of the stock market;

A.III. the rise in asset values which occurred immediately after 30 March 2020.

B. Assumed for the purposes of the proposed 2021 Valuation a reduced real future asset returns which offsets the asset value increase which had the consequence of inflating the funding deficit,

C. Assumed in the valuation methodology that growth of assets would be 0.0% above CPI for 30 years without covenant support, increasing to 0.2% above CPI with covenant support assumed in the technical provisions consultation document, ignoring the relevant consideration that the Scheme assets had grown 32% in 16 months, namely from £66.5 billion in March 2020 to £87.8 billion in July 2021,

D. Recommended to the JNC that it must impose contribution rises unless cuts were made to the defined benefit pension and accrual rates, ignoring the impact that this would have on members' entitlements, employers or the Higher Education sector, and that the burden of funding the cost of past service benefits would fall on new or existing members with ongoing service.

E. Failed to design a valuation methodology that protects and is in beneficiaries' best interests.

F. Failed to implement the recommendations of the final JEP report set out above including the reform of valuation governance.

G. Failed to have regard to the fact that the level of assumed risk must be reasonable and prudent having regard to the objective of providing an affordable but secure financial future for members and their families.

H. Adopted an imprudent assumption as to likely rates of return with the consequence that greater contributions are required by employers and members to maintain existing benefits or benefits reductions are required to avoid contribution increases.

I. Ignored the fact that short-term and long-term perspectives are important and ignored that, as a scheme not closed to future defined benefit accrual, the Scheme is relatively immature for funding perspectives.

J. Ignored the fact that intergenerational fairness is paramount in determining what, if any, contributions increases should be considered and whether benefit reductions are required to contain cost.

K. Ignored the fact that it was possible to avoid raising contribution rates and reducing benefits by i) adopting reasonable assumptions as to investment returns, ii) making allowance for the unprecedented circumstances of the pandemic and/or iii) the subsequent investment performance of the Scheme and asset recovery since March 2020.

L. At all times been apparently concerned primarily with the fact that TPR could be expected to question the Company's reasons for the change of a valuation date and/or actuarial assumptions ignoring the facts that the question is one for the Company's independent judgment which could be justified on legal, economic, actuarial and other grounds having regard to the following:

L.I. adhering to a 31 March 2020 valuation and failing to update for experience would have profound long-term consequences for members;

L.II. the sponsoring employers have an interest in retaining employees and maintaining security in retirement for employees;

L.III. increasing contributions is likely to lead to more employees opting out and more employers from exiting the Scheme thus increasing the funding strain on remaining employees and/or employers.

82. By reasons of the matters set out above, the Directors and the shadow director have acted in breach of statutory and/or fiduciary duty:

<u>Particulars</u>

A. Acting beyond their powers by ignoring relevant considerations and/or taking into account irrelevant considerations.

B. Failing to act in good faith in the way most likely to promote the success of the Company.

C. Failing to exercise independent judgment.

D. Fettering their discretion by committing in advance to an as-at 31 March 2020 valuation date.

E. Failing to revisit the committal to an as-at 31 March 2020 valuation date.

F. Failing to comply with Regulation 5 of the Occupational Pension Schemes (Scheme Funding) Regulations 2005 by failing to justify the change from the method or assumption used on the previous occasion on which the Scheme's technical provisions were calculated by a chance of legal, demographic or economic circumstance.

83. The above breaches of statutory and/or fiduciary duty by the Directors have caused and will continue to cause the Company loss constituting the loss of assets and increased Scheme deficit identified in the as-at 31 March 2020 valuation, the need to recover such deficit, the loss of revenue as employers and members leave the Scheme and new members do not join, the loss of future investment return and other associated consequences of responding to this position.

CLAIM 2: DISCRIMINATION ON THE GROUNDS OF SEX, AGE AND/OR RACE

84. Following the 2020 Valuation the Company intends to amend the rules of the Scheme, in relation to pensionable service from 1 April 2022, to introduce the following changes:

A. The salary threshold, above which no defined benefits can be accrued, is to be reduced from £59,883.65 to £40,000.

B. A cap of 2.5% on annual increases to the Salary Threshold.

C. The accrual rate is to be reduced from 1/75 to 1/85.

D. A cap of 2.5% on the annual increase to pensions in payment.

85. The provisions of the Scheme have effect subject to the non-discrimination rule inserted pursuant to section 61 of the Equality Act 2010 ("**EqA10**"). The Company as trustee must not discriminate against members in carrying out any of its functions in relation to the Scheme. The above changes amount to discrimination pursuant to section 19 EqA10 on the grounds of sex, age and/or race for the reasons set out below.

The Salary Threshold – indirect discrimination on the grounds of sex, age and/or race

86. The proposed salary threshold of £40,000 for service from 1 April 2022 is a provision, criterion or practice which will indirectly discriminate against women, younger, and black and ethnic minority members, contrary to section 19 EqA10 as follows:

    A. Reducing the salary threshold reduces a member's Career Revalued defined benefit pension entitlement and means that more of their pensionable service translates into a defined contribution entitlement. Reducing the amount of defined benefit entitlement which a member accrues each year necessarily reduces the defined benefit element of a member's annual pension which that member is guaranteed to receive no matter how long they live. The proposed salary threshold thus accelerates the point in any one year of receipt of pension at which the member needs to utilise their defined contribution pot which, in turn, accelerates the transfer of risk of funding deferred pay in the form of pension from employers to members which, in turn, increases the risk on members that their defined contribution benefits will run out and be insufficient to provide for the members in retirement.

    B. The proposed salary threshold will put women at a particular disadvantage pursuant to section 19(2)(b) EqA10 because women will, on average, live appreciably longer than men, have to fund more years of retirement, and are likely to have more risk of a pension shortfall than men because their finite defined contribution pot will have to last for appreciably more years on average.

    C. The proposed salary threshold will put younger members at a particular disadvantage pursuant to section 19(2)(b) EqA10 because younger members will, by definition, have longer until retirement and will suffer a greater reduction of defined benefit entitlement and be more reliant on their defined contribution pot and thus assume more risk of a pension shortfall than older members in relation to future service who will be less reliant on their defined contribution pot which will constitute a smaller proportion of their overall pension entitlement.

    D. The proposed salary threshold will put black and ethnic minority members at a particular disadvantage pursuant to section 19(2)(b) EqA10 because, together with the reasons above, these members are statistically likely to be younger.

87. The proposed salary threshold cannot be justified as being a proper means of achieving a legitimate aim in relation to discrimination on the grounds of sex, age and/or race for the following reasons:

A. The discriminatory impact is not necessary, as there are less discriminatory measures that could be used to comply with all statutory funding objectives. It is possible, adopting prudent investment assumptions comparable to those used in the 2018 valuation and having regard to the increase in assets since March 2020, to provide for existing benefits on existing contribution rates without increasing the Scheme's deficit. Further or alternatively, it is possible to reduce USS operating costs without reducing pension benefits in a way that has a discriminatory impact.

B. Conversely, the implementation of the proposed salary threshold will mean that the investment return on members' and employers' contributions will more than adequately fund the ongoing accrual based on the proposed salary threshold whereby the surplus will be used as deficit recovery contributions which will reduce the deficit attributable to past service.

C. There can be no justification for reducing the deferred remuneration for new and existing active members (who are more likely to be female, younger, and/or black and ethnic minority) with ongoing accrual in order to make deficit recovery contributions and thus pay for the deferred remuneration for pensioner, deferred and active members in relation to past service (who are more likely to be male, older and/or white) to comply with the Scheme's statutory funding objective.

The accrual rate - indirect discrimination on the grounds of sex, age and/or race

88. The proposed accrual rate of 1/85 for service from 1 April 2022 is a provision, criterion or practice which will indirectly discriminate against women, younger and/or black and ethnic minority members, contrary to section 19 EqA10 as follows:

A. Reducing the accrual rate reduces a member's Career Revalued defined benefit pension entitlement and means that more of their pensionable service translates into a defined contribution entitlement. Reducing the amount of defined benefit entitlement which a member accrues each year necessarily reduces the defined benefit element of a member's annual pension which that member is guaranteed to receive no matter how long they live. The proposed accrual rate thus accelerates the point in any one year of receipt of pension at which the member needs to utilise their defined contribution pot which, in turn, accelerates the transfer of risk of funding deferred pay in the form of pension from employers to members which, in turn, increases the risk on members that their defined contribution benefits will run out and be insufficient to provide for the members in retirement.

B. The proposed accrual rate will put women, younger and black and ethnic minority scheme members at a particular disadvantage compared to male, older or white members. Older members (who are more likely to be male and white) are more likely to have greater accrued rights under the Scheme in relation to past service and so will accrue fewer years of pensionable service at the proposed lower rate which means that they will be less adversely impacted by a rule amendment reducing the accrual rates to 1/85. Younger members (who are more likely to be female and black and ethnic minority) are more likely to have a greater proportion of their pensionable service under the Scheme accruing benefits at 1/85 as opposed to 1/75.

89. The proposed accrual rate cannot be justified as a legitimate means of achieving a proper purpose in relation to discrimination on the grounds of sex, age or race for the following reasons:

A. The discriminatory impact is not necessary, as there are less discriminatory measures that could be used to comply with all statutory funding objectives. Continuing to provide for existing benefits will not, on prudent investment assumptions comparable to those used in the 2018 valuation and having regard to the increase in assets since March 2020, lead to an increase in the Scheme's deficit. Further or alternatively, it is possible to reduce operating costs without reducing pension benefits in a way that has a discriminatory impact.

B. Conversely, the implementation of the proposed salary threshold will mean that the investment return on members' and employers' contributions based on the proposed accrual rate will more than adequately fund the ongoing accrual whereby the surplus will be used as deficit recovery contributions which will reduce the deficit attributable to past service.

C. There can be no justification for reducing the deferred remuneration for new and existing active members (who are more likely to be female, younger and black and ethnic minority) with ongoing accrual in order to make deficit recovery contributions and thus pay for the deferred remuneration for pensioner, deferred and active members in relation to past service (who are more likely to be male, older and white) to comply with the Scheme's statutory funding objective.

The cap on annual increases to benefits

90. The proposed rule providing a cap of 2.5% on any increases to benefits accrued on or after 1 April 2022 is a provision, criterion or practice which will indirectly discriminate against women, younger and black and ethnic minority members, contrary to section 19 EqA10 as follows:

A. The discriminatory disadvantage of the proposed salary threshold and accrual rate set out above is exacerbated by the proposed cap of 2.5% on annual increases to pensions in payment in relation to accrual on or after 1 April 2022.

B. Capping the annual pension increases in this way increases the prospect that pensions will not keep pace with the increase in the cost of living which will put younger scheme members, women and black and ethnic minority members at a disadvantage compared to older, male and/or white members. Older members (who are more likely to be male and white) are more likely to have a greater proportion of their pensionable service under the Scheme not subject to the proposed cap and so will be less adversely impacted by the cap. Younger members (who are more likely to be female and black and ethnic minority) are more likely to have a greater proportion of their pensionable service under the Scheme subject to the proposed cap.

91. The proposed cap cannot be justified as a legitimate means of achieving a proper aim in relation to discrimination on the grounds of sex, age and/or race for the following reasons:

    A. The discriminatory impact is not necessary, as there are less discriminatory measures that could be used to comply with all statutory funding objective. Continuing to provide for benefits based on future service subject to an annual increase linked to CPI capped at 10% will not, on prudent investment assumptions comparable to those used in the 2018 valuation and having regard to the increase in assets since March 2020, lead to an increase in the Scheme's deficit. Further or alternatively, it is possible to reduce operating costs without reducing pension benefits in a way that has a discriminatory impact.

    B. Conversely, the implementation of the proposed cap will mean that the investment return on members' and employers' contributions will more than adequately keep pace with inflation whereby the surplus will be used to reduce the deficit attributable to past service.

Exposure to the Company to claims of discrimination

92. As the Company can only act through its agents, the changes are contrary to the Company's duty to act lawfully for proper purposes in accordance with the Scheme Rules and Articles and Memorandum of Association, subject to statute and have exposed the Company to claims of discrimination as set out above. There is no published evidence that the Company has considered the impact of the changes on different protected groups. This exposure to claims of discrimination and apparent failure to undertake an impact assessment is contrary to the interests the Company, both by exposing the Company to discrimination claims, and the absence of any indication that the Company has considered the impact of doing so.

93. By reason of the matters set out above, the introduction of each of the proposed salary threshold, accrual rate and cap on annual increases constitutes a breach of the Directors' statutory and/or fiduciary duties to the Company.

94. By reason of the above breaches of statutory and/or fiduciary duties, the Company has suffered loss from its exposure to claims by relevant Scheme members for indirect discrimination on the grounds of sex, age and/or race.

CLAIM 3 – SUPER-INFLATIONARY INCREASE IN OPERATING AND MANAGEMENT COSTS

95. As at 31 March 2007, according to the Scheme's *Reports & Accounts for the year ended 31 March 2007*:

    A. total investment management personnel costs were £4,655,000 (p.84).

    B. total operating costs were £38,066,000 (p.77).

    C. the scheme's net assets were £30,358,100,000 (p.20).

    D. total operating costs as a percentage of net assets were 0.125%.

96. As at 31 March 2020 according to the Scheme's *Reports & Accounts for the year ended 31 March 2020*:

    A. total investment management personnel costs were £66,000,000 (p.69), an increase since 2007 of 1318%.

    B. total operating costs (or 'total scheme overheads') were £160,000,000 (p.69), an increase since 2007 of 320%.

    C. the scheme's net assets were £67,684,000,000 (p.63).

    D. total operating costs as a percentage of net assets were 0.236%.

97. Similarly, total operating costs in the Company rose in the period from 1995 to 2020 to £160,000,000 from £9,752,000: *Reports and Accounts for the year ended 31 March 1996* (p.58). This is a 1540% increase. This translates into a relative increase of the fund's net assets (p.41) in total operating costs from 0.099% to 0.236% of the fund's net assets.

98. Individual salaries have increased significantly over the period. For example, the total

remuneration (salary and benefits) of the post of chief executive has risen from £291,000 in 2013 to £756,700 in 2020. The remuneration of the current chief executive, who commenced in August 2013, has been and is subject to a long term incentive plan which was stated to be "*entirely related to performance and the achievement of set objectives*." (*Report & Accounts 2014*, p.60).

99. By reason of the above, the increase in the total operating costs and/or investment management costs (including internal and external personnel costs) constitutes a breach of the Directors' statutory and/or fiduciary duties to the Company and/or is negligent to the personal advantage of the Directors.

100. By reason of the above breaches of statutory and/or fiduciary duties, the Company has suffered loss in the form of the significant total alternatively investment management costs, including personnel costs, paid since 2007. The increase in internal and external management costs is in breach of statutory, fiduciary or other duty harms the success of the Company and needs to be remedied and reversed by the Directors and shadow director. If costs were reduced to levels in comparable schemes, the discount rate, which includes an adjustment for investment costs, could be increased. If the saving from such reduced costs since 2007 had been invested on behalf of the Scheme, the returns would significantly set off the deficit identified by the Company and reduce the need for any change to the benefit structure of the Scheme.

CLAIM 4: BREACH OF THE DUTY TO ACT IN THE COMPANY'S LONG TERM INTERESTS: FOSSIL FUELS

101. The Scheme continues to invest directly and indirectly in fossil fuels, as defined at s 187(4) Energy Act 2004, namely coal, substances produced directly or indirectly from coal, lignite, natural gas, crude liquid petroleum, or petroleum products (which definition is adopted in these Particulars of Claim unless otherwise stated). In the absence of disclosure, it is not clear what is the precise extent of the Scheme's fossil fuels investment, but it is understood that that at the beginning of 2020 the investment was in excess of £1 billion. The Company makes publicly available its top 100 equity holdings which currently include Royal Dutch Shell plc, Reliance Industries Ltd and Glencore plc. To

this must be added equity investment in other companies outside of the top 100 equity holdings lists and investment in funds, shares, derivatives and other financial products which invest in, inter alia, fossil fuels.

102. On 4 May 2021 the Company announced that, in light of its existing view of climate change as a financial risk to the returns generated by its assets, its ambition was to be net zero for carbon by 2050. It is currently not clear when USS first formed a view (through its directors and/or shadow director) that climate change posed a financial risk to the returns generated by its assets. Whenever that view was first formed, the directors have failed to form any or any adequate actual plan as to how to address that financial risk.

103. The Scheme's continued investment in fossil fuels without any or any adequate plan for divestment constitutes a breach of the Directors' duty pursuant to, and on a proper construction of, sections 171 and 172 CA06 to act for proper purposes, including making investments that avoid significant risk of financial detriment to the Scheme, the beneficiaries and the Company, and to promote the success of the Company having regard inter alia to the Company's long term interests. According to the Human Rights Act 1998 these duties must be construed compatibly with Articles 2 and 8 of the European Convention on Human Rights (rights to life, and to private and family life, home), and must further be construed compatibly with the United Kingdom's obligations in international law.

104. Further or alternatively, in failing to have such a plan and/or in having a mere ambition for the Scheme to be carbon neutral in 2050, the Directors have failed to take into account the following relevant considerations:

A. The longevity of the Scheme, which is still open to future accrual.

B. The terms and consequences of the Paris Agreement, a legally binding international treaty on climate change adopted on 12 December 2015 and effective on 4 November 2016 seeking to limit global temperature rise over the next century below 2% above pre-industrial levels.

C. The inevitable move away from fossil fuels impacting on the performance of fossil fuel investments as a consequence of the Paris Agreement, actions taken by countries on international and national bases and/or otherwise.

D. The results of the members' ethical investment survey conducted in November 2020 in which members indicated by a strong majority a wish for the Company not to invest in fossil fuels, which has not been published and appears to have been disregarded by the Directors.

E. The calls by UCU and individual universities for the Company to divest from fossil fuels.

105. Having regard to the matters above, the long-term interests of the Company (and the Scheme and its members) can only be met by an immediate plan for disinvestment and the only rational action that the Directors could take pursuant to sections 171 and 172 CA06, is to devise and implement such a plan as soon as possible. The Directors' failure to devise and implement such a plan is a breach of their statutory and/or fiduciary duties.

106. The above failure of the Directors and shadow director to take such steps has prejudiced and will continue to prejudice the interests and success of the Company which has suffered and will continue to suffer loss in consequence.

AND on behalf of the First Defendant the Claimants claim:

(1) In relation to Claim 1:

(A) Declarations that, by reason of one or most aspects of the conduct set out at paragraph 81 above, one or more of the individuals constituting the Second and/or Third Defendants has been in breach of statutory and/or fiduciary duty in one or more of the ways alleged at paragraph 82.

(B) Declarations that such breach(es) have caused or will cause the First Defendant loss as alleged at paragraph 83.

(C) An injunction preventing the Second and/or Third Defendants from taking steps to implement the proposed accrual salary threshold, accrual rate, cap on annual increases, and/or contribution increases.

(2) In relation to Claim 2:

(A) Declarations that the introduction of one or more of the proposed salary threshold, accrual rate and/or cap on annual increases set out at paragraph 84 will constitute discrimination on the part of the First Defendant contrary to sections 19 and/or 61 of the Equality Act 2010.

(B) Declarations that, by the introduction of one or more of the proposed salary threshold, accrual rate and/or cap on annual increases set out at paragraph 84, one or more the individuals constituting the Second and/or Third Defendants has been in breach of statutory and/or fiduciary duty in one or more of the ways alleged at paragraph 93.

(C) Declarations that such breach(es) have caused or will cause the First Defendant loss as alleged at paragraph 94.

(D) An injunction preventing the Second and/or Third Defendant from taking steps to implement one or more of the proposed salary threshold, accrual rate, cap on annual increases and/or contribution increases set out at paragraph 84.

(3) In relation to Claim 3:

(A) Declarations that one of more of the increases in costs set out at paragraphs 95 – 98 constitutes a breach on the part of one or more of the individuals constituting the Second and/or Third Defendant of their statutory and/or fiduciary duties to the Company and/or is negligent to the personal advantage of one or more of the individuals constituting the Second and/or Third Defendants as alleged at paragraph 99.

(B) Declarations that such breach(es) have caused or will cause the First Defendant loss as alleged at paragraph 100.

(4) In relation to Claim 4:

(A) Declarations that the absence of any or any adequate plan to divest from investment in fossil fuels is contrary to the interests of the Company as set out at paragraphs [103] – [106] constitutes a breach on the part of one or more of the individuals constituting the Second and/or Third Defendant of their statutory and/or fiduciary duties to the Company as alleged in paragraph 105.

(B) Declarations that such breach(es) have caused or will cause the First Defendant loss as alleged at paragraph 106.

(5) The Claimants be indemnified out of the First Defendant's assets in respect of the legal costs of the multiple derivative claim.

(6) The individuals listed at Appendix 1 to the Claim Form be removed and replaced as directors of the First Defendant.

(7) All other necessary and incidental orders, enquiries and directions.

(8) Further or other relief.

Statements of truth

I believe that the facts stated in these particulars of claim are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

Signed:

Print Name: LAWRENCE EWAN McGAUGHEY

Dated: 26 October 2021

Signed:

Print Name: NEIL MARTIN DAVIES

Dated: 26 October 2021

Claim No.______________

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF UNIVERSITIES SUPERANNUATION SCHEME LIMITED
MULTIPLE DERIVATIVE CLAIM
BETWEEN:

3. LAWRENCE EWAN McGAUGHEY
4. NEIL MARTIN DAVIES

Claimants

and

(4) UNIVERSITIES SUPERANNUATION SCHEME LIMITED
(5) THE INDIVIDUALS LISTED AT APPENDIX 1 TO THE CLAIM FORM
(6) THE INDIVIDUALS LISTED AT APPENDIX 2 TO THE CLAIM FORM

Defendants

APPENDICES TO THE CLAIM FORM

Appendix 1 – List of current Directors of the Company

1. Dame Katherine Mary Barker, appointed 1 April 2020
2. Andrew Charles Brown, appointed 1 August 2020
3. Professor Sir Paul James Curran, appointed 1 September 2020
4. Gary Dixon, appointed 1 April 2019
5. Marian Bronwen Elliott, appointed 1 September 2021
6. Ian Richard Maybury, appointed 1 November 2013
7. Professor Vito Antonio Muscatelli, appointed 1 April 2015
8. Russell Clive Picot, appointed 1 February 2021

9. Michael Rene Poisson, appointed 1 November 2012 (pension trustee)
10. Helen Marina Shay, appointed 1 September 2020 (solicitor)
11. Stephen William Spinks, appointed 1 September 2018 (registrar)
12. David Charles Hunter Watts, appointed 1 March 2021
13. William Kenny Galvin – shadow director since 1 August 2013

Appendix 2 – former Directors of the Company

1. Professor Dame Glynis Marie Breakwell (appointed 1 September 2009, resigned 31 August 2018)
2. Professor Roger John Bull (appointed 1 February 2004, resigned 31 March 2014)
3. Michael Geoffrey Butcher (appointed 1 November 2004, resigned 31 January 2014)
4. Kevin James Carter (appointed 1 September 2012, resigned 31 August 2021)
5. Joseph William Devlin (appointed 1 September 2007, resigned 10 October 2015)
6. Professor Sir David Stephen Eastwood (appointed 1 January 2007, resigned 31 August 2020)
7. Stephen Joseph Egan (appointed 6 October 2009, resigned 29 March 2012)
8. Kirsten English (appointed 1 May 2014, resigned 31 January 2021)
9. David Guppy (appointed 30 September 2017, resigned 3 December 2019)
10. Sir Martin Best Harris (appointed in or about 1989, resigned 31 March 2015)
11. Virginia Anne Homes (appointed 1 September 2005, resigned 31 August 2013)
12. Howard Robert Jacobs (appointed 1 October 2002, resigned 30 September 2012)
13. David Croft McDonnell (appointed1 April 2007, resigned 31 March 2016)
14. Michael Ralph Merton (appointed 1 February 2014, resigned 31 January 2021)
15. Professor Stuart Beaumont Palmer (appointed 31 March 2016, resigned 31 March 2019)
16. Angela May Roger (appointed 1 September 2012, resigned 31 August 2016)
17. John William Donald Trythall (appointed 1 October 2009, resigned 30 September 2017)
18. Steve Wharton (appointed 1 September 2016, resigned 31 August 2020)

Claim No. ______________

IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

INSOLVENCY AND COMPANIES LIST (ChD)

IN THE MATTER OF UNIVERSITIES SUPERANNUATION SCHEME LIMITED
MULTIPLE DERIVATIVE CLAIM
BETWEEN:

1. LAWRENCE EWAN McGAUGHEY
2. NEIL MARTIN DAVIES

Claimants

and

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(2) THE INDIVIDUALS LISTED AT APPENDIX 1 TO THE CLAIM FORM
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6. Professor Sir David Stephen Eastwood (appointed 1 January 2007, resigned 31 August 2020)
7. Stephen Joseph Egan (appointed 6 October 2009, resigned 29 March 2012)
8. Kirsten English (appointed 1 May 2014, resigned 31 January 2021)
9. David Guppy (appointed 30 September 2017, resigned 3 December 2019)
10. Sir Martin Best Harris (resigned 31 March 2015)
11. Virginia Anne Homes (appointed 1 September 2005, resigned 31 August 2013)
12. Howard Robert Jacobs (appointed 1 October 2002, resigned 30 September 2012)
13. David Croft McDonnell (appointed1 April 2007, resigned 31 March 2016)
14. Michael Ralph Merton (appointed 1 February 2014, resigned 31 January 2021)
15. Professor Stuart Beaumont Palmer (appointed 31 March 2016, resigned 31 March 2019)
16. Angela May Roger (appointed 1 September 2012, resigned 31 August 2016)
17. John William Donald Trythall (appointed 1 October 2009, resigned 30 September 2017)
18. Steve Wharton (appointed 1 September 2016, resigned 31 August 2020)