# Arrangements for OU staff breaching the HMRC's pensions lifetime allowance

## 1. Introduction

The Open University is part of the Higher Education sector's pension scheme known as Universities Superannuation Scheme, or USS, which provides an important benefit to OU staff and is a key factor in enabling us to recruit and retain a skilled workforce to support our students.

Changes in the tax treatment of pensions over recent years, and in particular the reduction in the lifetime allowance (LTA) which took place between 2016 and 2023, has meant that staff with longer service were more likely than before to incur a potentially significant tax charge on their pensions savings in excess of the HMRC's LTA figure. It is emphasised that this potentially affects a very small number of staff overall – and each member is advised to seek further information, and where appropriate, financial advice, before making any important decisions relating to their pension.

Changes to the pension tax regime in recent years have seen the LTA lowered to £1m; the LTA is the amount that can be saved in a pensions scheme (over an employee's entire career, taking into account all of their pension saving) on a tax-advantaged basis. In cases where the LTA was breached, additional tax charges applied to the excess pension savings. The LTA stands at £1.07 million for the year 2023/24[1].

In light of the initial introduction of the LTA, and the lowering of its value from 2016, USS provided options so that an individual could choose to use a Voluntary Salary Cap (VSC) facility to reduce the future accrual of benefits and avoid breaching the LTA, or alternatively use an Enhanced Opt Out (EOO) facility to stop accruing any future pension entitlement, but retain death in service and incapacity benefits as if they were an active member of the pension scheme. In addition, individuals could opt out of the scheme entirely. Some of these options could be used in conjunction with protection options available from HMRC[2].

In a further change of the HMRC pensions rules, from 6 April 2023 the pensions tax charge which applies when pension saving exceeds the LTA was effectively changed to 0%. The LTA is set to be abolished entirely from April 2024. This change was important, and in response some employees may decide to join/re-join USS and (re)commence pension saving (in the knowledge that there will be no charge on any excess pension saving), whilst others might choose to retain the status quo.

## 2. Arrangements

In order to deal with this changing pension landscape and still allow the University to attract and retain staff affected by these new potential tax liabilities, the University – led by its Remuneration Committee – maintains a policy for staff affected, or potentially affected, by the lifetime allowance (and this document sets out the University's approach). Under these arrangements, the University has the discretion to pay a non-pensionable cash

[1] Further details on the LTA and its value over time can be found at https://www.gov.uk/tax-on-your-private-pension/lifetime-allowance, and at www.uss.co.uk.
[2] Further details can be found at https://www.gov.uk/guidance/pension-schemes-protect-your-lifetime-allowance, and at www.uss.co.uk.

supplement where individuals can demonstrate they have exceeded (or are about to exceed) the LTA and as a result have exercised specific options available to such individuals (including, by putting in place a Voluntary Salary Cap/an Enhanced Opt Out election, and/or have taken out HMRC's Individual or Fixed Protection, and/or have opted out of USS entirely or decided not to join), and provided the University with documentary evidence of any such action(s).

The cash in lieu of pension contributions arrangement will be structured in the following way:

a) The cash payment in lieu of pension contribution is payable at the discretion of the University, there will be no contractual right to the payment and the University can vary the amount or withdraw it at its absolute discretion. The cash payment in lieu of pension will always be reconsidered on the notification by USS of changes to the level of employer contributions, which usually follow each triennial actuarial valuation.
b) In order to be considered for the payment, an individual is required to demonstrate that they have put in place one of the elections mentioned above (for example an EOO or have opted out of the scheme entirely).
c) There shall be no new requests for payment of a cash payment in lieu of pension contributions on or after 6 April 2023, due to the fact that the LTA charge – and in due course (from April 2024) the LTA itself – is to be abolished. This shall not affect the right of the University to continue to make payment of a cash payment, at its absolute discretion, to those in receipt of such payment as at 5 April 2023.
d) The cash alternative is initially set at a level that would be broadly cost neutral compared with members remaining within the scheme and continuing to accrue pension benefits. The employer contribution to USS as of 1 January 2017 was 18% of salary and this is broken down as follows:
    i) Future service defined benefits (this accounts for 13%)
    ii) The employer contribution to the funding deficit (which is 2.1%)
    iii) The employer contribution to the Defined contribution scheme (2.5% - not including the 1% match scheme)
    iv) Expenses of 0.4%

From 1 January 2017 the cash alternative was based on items i and iii (15.5%), adjusted to 13.6% to take account of employer National Insurance (NI) liability. This rate of payment is subject to review by the University and amended at its discretion if the employer contribution rate to USS changes in the future, or if there is any change in the employer NI rate.

**Payment of the non-pensionable cash supplement**
*(note that all of these provisions apply to existing elections as at 5 April 2023; there shall be no new elections on or after 6 April 2023)*

1) The non-pensionable cash supplement is calculated as a percentage of the employee's pensionable salary on the date following an application from an employee from which the University confirms that payment of the supplement shall commence (or, if later, from the effective date of the pensions elections required for eligibility, for example from the effective date of an employee's opt-out of USS).
2) The additional cash supplement will be paid less deductions for income tax and national insurance contributions (and any additional deductions).
3) The new arrangement should not involve any additional cost to the University when compared with the employer pension contributions.
4) The non-pensionable cash supplement may be increased or decreased depending on the employer contributions the university pays to USS in respect of pension scheme members.
5) The non-pensionable cash supplement will normally be calculated on an annual basis.
6) The University reserves the right to adjust the cash supplement at any time where it reasonably determines that its remuneration costs have changed.

7) Where an employee re-joins the USS scheme for the purposes of accruing pensions benefits the non-pensionable cash supplement will cease on the working day before the date the employee re-joins the USS scheme.
8) The non-pensionable cash supplement will not form part of an employee’s pensionable salary.
9) The non-pensionable cash supplement will at the discretion of the University be available to employees as long as Fixed or Individual Protection and / or the Enhanced Opt Out option from USS rules exist or the employee has opted out of the scheme completely. Should the University decide to withdraw this supplement, where possible, this would be done with appropriate notice.
10) Any decision on whether a cash supplement is to continue to be paid will be made by the University Secretary following consultation with the Group People Director. There will be no right of appeal should a supplement not be agreed.