Written evidence from DEC Pensioners (PPF0037)

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Former Chair of the Digital Equipment Company (DEC) Pension Fund Trustees
And on behalf of all DEC pensioners with pre 1997 contributions

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1 EXECUTIVE SUMMARY

1.1 The issues raised in this submission concern the unfair and discriminatory nature of the present legislation, which requires pensions in payment to be increased in line with inflation for pensioners whose service occurred after April 1997, but not for those whose service was prior to this date.

1.2 With some employers this has encouraged a legalised form of “benefits apartheid” broadly relating to age, whereby one section of the plan’s membership enjoys mandated indexation whilst another section can legally have its pension income frozen (apart from the GMP element). This is a glaring example of “inter-generationally unfair outcomes” which the brief states The Pensions Regulator (TPR) is anxious to avoid.

We have conducted extensive research to determine what constitutes normal practice for most direct benefit pension providers. From this we can demonstrate that

- there are 4.6 million direct benefit pension holders in the private sector.
- 82% of pension holders with pre-1997 service are awarded increases averaging 2.8% in any given year.
- this amounts to 91% of the average annual RPI increase (3.0%) in any given year.
- 18% of pre 1997 pensioners do not receive an increase in any given year. However, in more recent years the average figure has been closer to 10%.

Although the available data cannot confirm this, it is likely that most pension providers withholding increases in any given year, only do so as a short-term expedient. Whilst the number of employers withholding increases over prolonged periods as a matter of policy (as in our case) is likely to be quite small.

1.3 The business impact of revised legislation which requires all classes of pensions to be indexed on the same basis as those with post-1997 service would therefore be limited to companies which are not already doing this voluntarily, and then only on the few occasions when they might otherwise have withheld them. The impact would of course be more significant for the few which regularly withhold increases but in the case we are most familiar with (Hewlett Packard/Hewlett Packard Enterprise) the incremental cost would be insignificant in the overall financial context, and we suspect this may be the case elsewhere.

1.4 The only way to ensure fair and equal treatment for all pensioners is to change the present legislation such that the same minimum indexation requirements apply to all pensioners irrespective of when their contributions were paid, and this is the change that we would like to see happen and which we therefore recommend.
The available data indicates that the incremental costs resulting from this change would be both modest and containable for most if not all employers.

1.5 We are nevertheless mindful of TPR’s objective to “minimise any adverse impact on the sustainable growth of employers” particularly during the present prolonged period of exceptionally low interest rates and poor gilt yields, which has caused many pension funds to go into deficit. This should resolve itself as financial markets return to normality.

Measures could be introduced which reflect an important distinction between pension providers that temporarily withhold discretionary increases for relatively short periods, and those which do so as a deliberate long-term policy, irrespective of the impact on their former employees/pensioners.

Such measures could specifically target this latter category to ensure zero impact on all other providers. By way of example, this could be accomplished by introducing a legally-enforceable requirement whereby, say, if average discretionary increases over the past five years fell below 50% of the average RPI over the same period, then this could be considered grounds for appeal to the Pensions Ombudsman. The latter could be empowered to require the offending employer to make up any shortfall unless it could justify not doing so on grounds of force majeure.

2 ABOUT US

2.1 This submission has been prepared by Digital Equipment Company (DEC) pensioners on behalf of all those in its membership whose pension contributions were made prior to April 1997. Our current estimate is that over 3000 of our colleagues are thus affected.

2.2 Digital Equipment Corporation was, in the 1980s/90s, the world’s second largest computer manufacturer and employed over 7,000 people in the UK which was its largest European subsidiary. In 1998 DEC merged with the Compaq company and subsequently in 2002 COMPAQ/DEC was acquired by the Hewlett Packard Inc. (HP) which assumed responsibility for its pension plans from that date. The DEC plan’s trust deeds contain no provisions which oblige HP to fund cost-of-living increases on pensions in payment, so any such increases are at the discretion of the company except where UK legislation requires it to do otherwise. In fact, HP has chosen to award only two one percent “discretionary” increases over the past fourteen years. During this period the RPI has increased by nearly 50%, so that those of our members who are not protected by minimum legal indexation have seen the value of their pensions almost halved. By contrast those that are protected (i.e. post 1997) have kept pace with inflation.

2.3 The result of the present legislation has been to create two classes of pensioner within the plan based on whether they worked for the company before or after April 1997. Many
of those who were employed prior to April 1997 are now suffering significant financial hardship whilst their post-1997 colleagues have been largely protected from inflation.

2.4 We have made vigorous representations both to the Trustees and to HP/HPE senior management, who have made clear that they have no intention of paying unless legally obliged to do so. One suspects that because many of us were not formerly employed by our present pension provider the sentiment is that it owes no moral obligations to us.

We have also established that HPE’s treatment of this group of UK pensioners is unique amongst its European subsidiaries.

This is why we now wish to explore whether such treatment could in future be deterred if not prohibited by revised pensions legislation.

3 RESEARCH RESULTS

3.1 The present legislation governing minimum annual cost-of-living increases is summarised in the table 1 below.

Table 1

<table>
<thead>
<tr>
<th>Period of Service</th>
<th>GMP</th>
<th>non-GMP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-1988</td>
<td>Nil</td>
<td>Nil</td>
</tr>
<tr>
<td>1988-1997</td>
<td>3%</td>
<td>Nil</td>
</tr>
<tr>
<td>1997-2005</td>
<td>3%</td>
<td>RPI increase, up to 5%</td>
</tr>
<tr>
<td>2005-Present</td>
<td>3%</td>
<td>RPI increase, up to 2.5%</td>
</tr>
</tbody>
</table>

Note: for service given prior to April 1997 there is no legal obligation to pay cost-of-living increases, except for the GMP element from 1988. The GMP is usually a minor portion of the overall pension, so 3% indexation typically amounts to an overall increase of about 0.6%.

3.2 We have conducted extensive research to analyse the practices and norms of private sector pension providers with respect to cost-of-living increases, and our findings are summarised in this section. Key sources of data include the Office of National Statistics (ONS), as well as surveys of FTSE 100 company pensions. Table 2 below shows ONS data

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1In 2015, the Hewlett Packard Company reorganised into two separate companies HP Inc. and HP Enterprise (HPE). The management of the DEC Pension Plan stayed with HPE.
from its annual surveys of direct benefit pensions in the private sector, specifically for annual increases paid to pensioners with pensions accrued before April 1997.

**Table 2**

<table>
<thead>
<tr>
<th></th>
<th>2009</th>
<th>2010</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pensioners in millions</td>
<td>4.6</td>
<td>4.7</td>
<td>4.5</td>
<td>4.6</td>
<td>4.6</td>
<td>4.6</td>
<td>4.6</td>
</tr>
<tr>
<td>Total receiving an increase</td>
<td>3.5</td>
<td>2.7</td>
<td>3.9</td>
<td>4.2</td>
<td>4.0</td>
<td>4.2</td>
<td>3.8</td>
</tr>
<tr>
<td>% of total</td>
<td>76.1</td>
<td>57.4</td>
<td>86.7</td>
<td>91.3</td>
<td>87.0</td>
<td>91.3</td>
<td>81.6</td>
</tr>
<tr>
<td>Average % Increase paid</td>
<td>2.4</td>
<td>1.9</td>
<td>3.5</td>
<td>3.6</td>
<td>2.7</td>
<td>2.6</td>
<td>2.8</td>
</tr>
<tr>
<td>% Increase in the RPI</td>
<td>-0.5</td>
<td>4.6</td>
<td>5.2</td>
<td>3.2</td>
<td>3.1</td>
<td>2.4</td>
<td>3.0</td>
</tr>
</tbody>
</table>

**Commentary**

The table shows that 81.6% of all pre 1997 pensioners were paid an average of 2.8% in any given year, compared with an average increase of the RPI of 3% per annum. i.e. increases amounted to 93.3% of the average RPI. Note that the period covered includes the years immediately following the collapse of the banking system followed by a world recession, so the “normal” number of pensioners not receiving increases is probably closer to 10% than the 17.4% figure shown. It is also reasonable to assume that these were not generally the same pensioners each year, so the actual percentage receiving no increase at all over the entire six-year period is likely to be very small indeed.

3.3 A Reuters survey of FTSE 100 companies in 2005 further confirmed that 99% of all FTSE 100 companies (with direct benefit pension schemes) fund them on the basis that pensions are increased in line with inflation and in most cases no distinction is made between pre and post 1997 service, either by virtue of the provisions in the plans’ trust deeds or as a matter of company policy.
4 PROPOSAL AND IMPACT ASSESSMENT

4.1 We have highlighted a deficiency in the current legislation in that different minimum indexation standards are applied to different pensioners, based solely upon the dates on which they happened to join and leave the plan. This permits unscrupulous employers to permanently withhold cost-of-living increases from one section of its pensioners whilst being legally obliged to pay the rest in line with inflation. We have also shown that the number of such employers is likely to be very small and that most employers would not be affected if legally obliged pay increases because they are already committed to paying these.

4.2 Our proposal is therefore to revise the legislation on indexation to ensure that the minimum indexation standards which currently apply only to post-April 1997 contributions are in future applied to all contributions irrespective of the year in which they occurred. The impact of this will be either zero or modest for almost all pensions providers, given that there are only a few – albeit large corporate entities – that are exploiting the present rules.

5 SUPPLEMENTARY PROPOSAL

5.1 The Pension Regulator’s objective to “minimise any adverse impact on the sustainable growth of an employer” suggests that any incremental costs or liabilities associated with new legislation must be justified in terms both of the cost/benefits and their “affordability” in terms of how they might affect the ability of a company to prosper and grow in the future. This objective is particularly critical at the present time because an unusually prolonged period of low interest rates and poor yields from the bonds market has resulted in many pension funds being in deficit. It is probable that the market will return to a more normal state in the medium term and funds will recover. An interim measure along the lines described below could be introduced.

5.2 Note that there is a major difference between employers which withhold cost-of-living increases from time to time force majeure but nevertheless treat payment as the default option; and those which treat non-payment as their default option so rarely if ever award increases unless legally obliged to do so. It is only this latter category that needs to be targeted. This could be accomplished by introducing a requirement that discretionary increases should not be less than, say, 50% of the increase in the RPI over the past five years. If an employer failed to achieve this, the Pensions Ombudsman could be empowered to give a determination in favour of the affected pensioners unless the employer could demonstrate that this would significantly damage its future prospects.

5.3 Finally we would offer the observation that TPR’s objective to “minimise the impact on an employer’s sustainable growth” is a worthy provision but of little practical value without
some attempt to define what is meant by “affordable” and what criteria or measurements to employ. The Pensions Ombudsman service would need some such guidance in this context.

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