

# UK Pensions Q&A Issued by BP

## A response and rebuttal by the BP Pensioner Group

*BP's 20 February 2024 Pensioner Information Session – an online TV programme with 1300 pensioner viewers on the day and presented by Kerry Dryburgh (BP VP), Kate Thomson (BP CFO) and Gary Hibbard (ex-Head BP Pensions) – left many unresolved issues in the growing BP pension dispute. The BP Pensioner Group has meticulously analysed all bp's nine answers to the questions in the bp online programme.*

### Q1 - How does the BP Pension Scheme work?

#### BP Answer

- The BP Pension Scheme is what's known as a final salary pension. It was open to most new bp employees until 2010. Employees did not have to contribute to it
- It promises to pay pension benefits that are calculated based on the last bp salary you earned when you were employed and on how long you worked at bp.
- Pensions in the scheme increase each year in-line with the retail price index (RPI) to a cap of 5%, as per the scheme rules. The guarantee and the cap have been in place since 1989.
- The Trustee can request a higher increase, known as a discretionary increase, but that increase requires bp's consent.

#### BP Pensioner Group (BPPG) Response:

- Employees "did not have to contribute to it" but according to the courts, employer pension contributions are a form of 'deferred pay'. Pensions were earned as part of the bp employment contract: they are not a discretionary gift.
- A large number of staff were encouraged by BP to make additional contributions, by transferring in pensions from other companies, by salary sacrifice or by making AVCs. BP promoted the advantages of doing so, emphasising the policy of increasing pensions in line with the cost of living. Many now feel they've been defrauded.
- Nowhere in the Trust Deed and Rules is there a reference to a pension's "cap" – although BP pretends it exists. The 5% is not "a cap". It is the maximum of the guaranteed increase that the Fund Trustee can provide without having to seek bp permission. This isn't a question of semantics. If there were a cap, then the Deed & Rules would have stated that explicitly and there would have been no mention of discretionary increases.
- Whilst a discretionary increase does require bp's consent, more than 2 decades of written and verbal statements convinced pensioners that such consent would be given except in adverse financial circumstances affecting the Fund.

### Q2 - Why didn't bp agree to the discretionary increase?

#### BP Answer

- In 2023, the Trustee requested bp's consent for a 4% discretionary increase (which would have brought the total increase in 2023 to 9%).

- The company considered a number of factors, including how a discretionary increase would impact the company now and into the future — and how it would impact other stakeholders.
- One of the reasons we did not think it was appropriate to provide an additional increase for UK pensioners was that we are a global company and others around the world were also experiencing inflation. Some have asked if we could increase benefits for all retirees globally – this is simply unaffordable.
- We also considered what other UK companies were doing. We did not find any UK companies that had consented to a discretionary increase above 5%.
- The BP Pension Scheme’s guaranteed increases in-line with RPI to a cap of 5% have been among the highest levels of increases provided by UK private sector company pension schemes.
- And since 2011 when civil service pension schemes first started using the consumer Price Index (CPI), increases in the BP Pension Scheme have overall outpaced average earnings and CPI inflation.

#### **BPPG Response:**

- It is important in trust and pension law that fund sponsors and trustees are careful to only consider relevant factors when making decisions affecting a Fund and its members.
- It is entirely reasonable for bp to consider how an increase might impact bp. Nobody wants bp to be bankrupted by a large pension increase, or to have to cut back investment or to cut the dividend or to hold down staff salaries. Yet BP has failed to make any case for how any stakeholders might have been adversely impacted by the Trustee’s recommendation to pay a discretionary increase, particularly as not a single penny of bp cash would have needed to go into the Fund.
- If bp is so concerned about global fairness, why does it “operate different pension plans by location and for those parts of our business where market practice is markedly different” and “set pay budgets... relative to market rates” and “operate different bonus plans for those parts of our business where market practice is markedly different?”(BP Annual Report 2022) What would you think if the UK Government decided to hold back increases in the State Pension because such increases were not available in other countries?
- It is inappropriate to compare differences in discretionary increases between companies. What matters is the total pension increase. BP’s 5% in 2023 compares with 10.1% in the civil service, teaching and local government, 12.0% at Smith Kline Glaxo, 12.6% at National Grid, British Gas, and British Airways.
- BP pension increases since 2010 have been better than some schemes and worse than others. Comparison with the State Pension shows that the State Pension to 2024 will have risen by 74% since 2010, whereas BP’s by only 57% (assuming a 5% increase in 2024).
- Comparing bp pensions with average salaries, either within or outside bp, is a red herring. If a comparison with other pension schemes is relevant, then bp pensions have, as noted above, fared badly relative to many others in recent years.

### **Q3 - The BP Pension Fund has a significant surplus. Why not use that surplus to pay for an additional increase?**

#### **BP Answer**

- The current surplus exists because of regular funding from bp and because of what is happening in the environment. As a company, we have contributed £3.8bn to the scheme

since it closed to new hires in 2010. And the Trustee has thoughtfully managed investments and risks over time.

- There is a surplus because bp has prudently funded the Fund and the Trustee has prudently managed it for the long term. The surplus provides an additional layer of protection for members' benefits through ups and downs of the UK and global economic cycles.
- A downturn in the economy can easily turn a surplus into a deficit so having a surplus means that the Fund can stay healthy and sustainable over the long-term.
- Pensions will be paid until 2080 and beyond, so it's important that we have a healthy fund for all that can provide a cushion to protect the Fund through bumpy times.

#### **BPPG Response:**

- The Fund is made up of monies earned by thousands of BP UK employees over many decades as part of their remuneration under their employment contracts or contributed on a voluntary basis. Over the 35 years since guaranteed pensions increases were introduced, bp has been able to avoid the need to contribute anything to the Fund (even the deferred pay element) in three quarters of those years, during which it benefited from "contribution holidays".
- A pension fund surplus exists not because of previous funding. This is quite wrong. It exists because assumptions made in the past about factors such as investment returns, inflation, interest rates, longevity and a lot more, have turned out, in total, to have been pessimistic.
- The £3.8bn contributed by bp since 2010 comprised 2 amounts; £0.9bn to allow recovery from a deficit that arose following the 2008-2010 financial crisis, and £2.9bn as normal contributions as part of the salary package; effectively deferred salary. However, through the previous two decades, going back to the early 90s, BP was able to take a prolonged contribution holiday, not needing to put in a single £. Why has this been forgotten?
- The Fund's Actuary, Mercer, in its most recent actuarial report wrote that "The Fund's investment strategy is substantially hedged against both interest rates and inflation although in extreme events additional Company contributions could still be required". With the Fund now holding 83% of its assets in the form of bonds and cash, it's very difficult to imagine the extreme events which might wipe out the current surplus, short of a default by the UK Government on its debts – something which hasn't happened since the 17th century and before the Bank of England was even founded.
- The fact that a few pensioners might survive beyond 2080 is a complete red herring, as average longevity assumed for those aged 60, is around 28 years. But more importantly, the Fund's surplus, already incorporates the probability that a few pensioners will survive that long. The surplus is currently so large that it could actually absorb a 15-year increase in average longevity.

**Q4 - Some pensioners have said that the 4% discretionary increase requested by the Trustee isn't enough and they want 11%, so that their pensions will have increased fully in line with RPI over the last couple of years. They also want bp to commit to future increases in line with RPI if it ever goes above 5% in the future. What's bp's view on that?**

#### **BP Answer**

- The cost of this 11% increase would be £2 billion or more.
- That amount is so large because none of us knows for sure what future inflation will be.

- It also incorporates the cost needed to cover not just the increase in the first year, but also the way that is compounded each year into the future, through to 2080 and beyond.

#### **BPPG Response:**

- At the end of 2022 the Surplus was nearly £5Bn. Each % increase in pension would increase the value of the Fund's pension obligation of all pensions into the future by 1%. At the end of 2022 they stood at £15.5 Bn, so a 11% increase would cost the Fund £1.7 Bn; absorbing about a third of the surplus.

- But that £1.7 Bn number is not what it would cost bp in cash or accounting terms. Given the size of the Fund surplus, there would be no cash input required from bp; not a single penny. And in accounting terms, the number is gross, and not net of 25% corporate profit tax. So the true net profit impact number would be £1.3 Bn; not small but not large in relation to bp's 2022 and 2023 profit numbers.

### **Q5 - Some pensioners have said bp has broken a promise to increase pensions in line with the cost of living?**

#### **BP Answer**

- Some pensioners have pointed to a letter from the early 1990s that talked about an intent to provide increases above 5% when the cost of living was high.

- The pension landscape has changed significantly since then.

- In 2007, the Trustee informed pensioners that pensioners should ordinarily expect increases to follow RPI, subject to a cap of 5% a year.

#### **BPPG response:**

- BP's answer is a gross misrepresentation of the published facts.

- At the 'Information Session', an extract from a letter 'pension increase 2007 – BP Pension Fund' was presented with wording selectively highlighted in an attempt to suggest the policy of "increasing pensions fully in line with the cost of living wherever

possible, and provided the Scheme has sufficient resources" had been withdrawn. The key phrase was somehow deliberately ignored – namely that "The Trust Deed includes a power to make discretionary increases. This is in order to provide some flexibility when circumstances are exceptional, such as price inflation being above the 5% ceiling."

- BP's Chief Financial Officer claimed that the long-established policy "hasn't been in place for over 15 years". This is demonstrably untrue.

- BP and the Trustee are aware of multiple BP Pension documents which demonstrate the policy being followed and applied . These were provided from the personal collections of hundreds of BP pensioners and current employees and are dated both before and well after 2007.

- In December 2023, BP and the Trustee received a detailed letter from a former senior manager with particular knowledge who has confirmed that the statement in the 2007 newsletter was not a withdrawal of the policy. That person has informed BP and the Trustee that he will provide a legal affidavit to that effect if necessary.

- In any case, withdrawal of the policy in 2007 would and should have been clearly signalled and messaged to employees and pensioners: not hidden away in a 2007 pension increase letter from the Fund only going to pensioners and only to be discovered with the benefit of hindsight. None of our members understand that this letter signalled the end of the policy, neither back then nor now.

## **Q6 - Has bp broken its own code of conduct in not agreeing to a discretionary increase?**

### **BP Answer**

- bp's Code of Conduct is mandatory for all bp employees, including leadership. bp is also guided by its 'Who we are' beliefs, including Care for others, and the company encourages people to speak up.
- There has been no breach of the Code of Conduct or our beliefs relating to discretionary increases for the BP Pension Scheme. The Scheme is governed by the Trust Deed and Rules, and bp has acted in line with these.

### **BPPG response:**

- BP's Code of Conduct requires 'speaking up' if aware of something inconsistent with the Code so that "all concerns are taken seriously and handled confidentially under bp's management of concerns process."
- The BP Pensioner Group 'spoke up' six months ago in a letter to BP raising concerns that executives may have breached the Code in relation to the decisions and processes undertaken that led to the rejection of the Trustee's recommendation to award a discretionary increase to UK pensions in 2023.
- The letter and attachments asked what steps BP executives had taken when they became aware of the pensioner dispute; what, if any, steps under the 'management of concerns' process were instigated after receipt of representations by thousands of members of the BP Pension Fund; and whether the former CEO who made the decision had used the Code of Conduct Decision Tool Number 6 – as required – to ensure he could comply with the Code and 'Do the Right Thing' when deciding to block the Pension Fund Trustees recommendation.
- Despite BP's apparent commitment to the Code, it has still not responded to the letter – five months after it was submitted. At the Information Session, the EVP, People & Culture summarily asserted that there had been no breach. BP's leaders have singularly failed to demonstrate – as the Code requires – that "all concerns are taken seriously or that the concerns raised are being handled confidentially under bp's management of concerns process".

## **Q7 - Last year, bp announced that eligible pensioners could receive payments from the bp Helios Fund. What is it and how many pensioners have been paid from the bp Helios Fund?**

### **BP Answer**

- In the UK, bp has given funding to the bp Helios Fund and to the Retail Trust, a body that supports those who worked in the retail sector.
- The funding is helping these bodies provide a one-off cost-of-living payment to eligible pensioners.
- A little under 10% of our UK pensioners have applied for the grant. The application deadline for the payment is 31 March this year.

### **BPPG response:**

- See response under Q8.

## **Q8 - Does giving a one-time grant to eligible pensioners create divisions among pensioners?**

### **BP Answer**

- We are pleased to be able to help those most in need – and don't believe this creates divisions among pensioners.
- One of the concerns we heard early in the pension conversation was that the rising cost of living was creating a unique challenge for those pensioners most in need.
- To address that, and in line with our 'Who we are' beliefs, the company gave additional funding to the bp Helios Fund and the Retail Trust.
- The bp Helios Fund and Retail Trust are independent of the BP Pension Fund. The one-off grant is additional to the pension from the BP Pension Fund.

### **BPPG response:**

- Any help to those in hardship and impacted by exceptional inflation over the past few years is to be welcomed. We are pleased that it was only after sustained pressure by the BP Pensioner Group – who gathered the testimonials of pensioners in hardship and submitted them to the BP Board – that the Company finally decided to act after a nearly two-year wait since the cost of living began to skyrocket.
- But BP appears to be confusing two things: Its duty to act as a good corporate citizen through acts of charity; and its legal duties and commitments to its retired staff which cannot be simply discarded.
- The MP for Shetland & Orkney told Parliament recently: "Pensions are not charitable hand-outs; this is money that people have earned in the course of their working life. BP seeks every step of the way to play one group off against the other."
- A one-off, means-tested charity handout of £2,500 to some pensioners is just that – a one off. But a pension – one that maintains its value year on year – is the vital financial underpinning that a pensioner depends upon in EACH of his or her remaining years. BP is not absolved of its duty to all its pensioners, nor has it lessened the hardship of these pensioners in each of the years to come by isolated acts of charity in one financial year.
- Given that prices are not going to decrease to 2021 levels, is bp planning to pay £2,500 to poor pensioners every year? And given the problems in accessing the grant for some of the most elderly and vulnerable pensioners, wouldn't it be better just to increase the pension to match the cost of living?

## **Q9 - A recent newspaper article claimed bp has enjoyed a \$700 million tax windfall on the BP Pension Fund surplus. Can that windfall pay for a discretionary pension increase?**

### **BP Answer**

- bp has not received a tax windfall, and the company does not expect to receive a tax windfall any time soon.
- As background: if the Trustee were ever to wind up the BP Pension Fund, and if there were a surplus at that time, some or all of that surplus may be paid back to bp. It's called a 'refund'. Under UK law, a refund is taxable.
- In November last year, the UK Government announced it intended to reduce the tax rate that is applied to refunds.

- But a refund could only happen when the Trustee winds up the Fund in 2080 – or earlier. The Trustee has already said on pensionline there are no plans to do that.
- The lower tax rate (if the Government's proposal goes ahead) would mean bp paid less tax. But we would only pay less tax if we had a surplus refund in the first place.
- As the Fund is not about to be wound up, an accounting gain for a change in tax rates on a surplus refund that may not happen until 2080 (assuming the Fund is still in surplus then) doesn't offset the known and real cost of a discretionary increase now.
- In comparison, once a discretionary increase is given, liabilities arise straight away and the surplus is reduced because higher pensions will be paid for all future years.

**BPPG Response:**

- BP says that the \$700m windfall is an accounting, non-cash impact. That is entirely true. But the impact of the 4% increase requested by the Trustee would also have only had an accounting impact.
- It's good to hear that bp has no plans to wind up the Fund. It is an exception amongst most UK pension funds and it's difficult to believe that it won't be wound up well before 2080.
- When bp and the Trustee agreed the Trust Deed, they decided that when the Fund winds up any surplus remaining after all benefits had been paid, should first be used to enhance the benefits for the members and only then then be considered for returning to bp. Despite this, bp still keeps claiming 100% of the surplus as its own in its accounts.