

New Airways Pension Scheme

Updating the structure of your Trustee Board

Frequently asked questions

Members and Pensioners were sent a communication dated 12 August 2016 from the Trustees explaining updates being made to the Trustee Board structure and a proposal for how Member Nominated Directors (MNDs) should be appointed under that new structure. These FAQs should be read in conjunction with the August letter which can be found [here](#).

In the letter, questions were invited from Members and Pensioners on the proposed approach for appointing the first MNDs. Below is a list of the questions received together with the Trustees' responses. We have combined questions with a similar topic to make the document easier for you to read. You may not therefore see your exact question below but a similar question should provide the answer you require.

Questions regarding the structure

1. *Is the letter I received regarding the change in structure a consultation?*

The Trustees are not conducting a statutory consultation procedure and there is not a statutory requirement to do so. The Trustees have decided in principle to change to a corporate trustee structure and the letters were issued to inform the membership of the change and provide an opportunity for questions to be asked.

The Trustees were keen to gain feedback on the process by which the MNDs of the Corporate Trustee would be appointed. A decision has not yet been taken on how MNDs will be appointed and therefore your views will be taken into account by the Corporate Trustee when it is putting in place its MND arrangements. Please see the questions below regarding the appointment of MNDs for further information.

2. *What are the advantages of changing the structure of the Scheme?*

Appointing a corporate trustee to be responsible for managing a pension scheme is aligned with current practice in the pensions industry, particularly for large schemes like the New Airways Pension Scheme (NAPS). This change will also help to make sure that the Scheme continues to get the investment terms and opportunities that it enjoys at the moment and it can be easier to attract and retain directors of a Corporate Trustee than individual trustees. This is because a Corporate Trustee has limited liability status, so a director's personal assets are not usually at risk.

3. *Will the same company be the Corporate Trustee for both APS and NAPS?*

There will be two separate Corporate Trustees, one for APS and one for NAPS. The six MNDs of the APS Corporate Trustee will be chosen by APS Members and Pensioners and the six MNDs of the NAPS Corporate Trustee will be chosen by NAPS Members and Pensioners.

4. *Who initiated the proposed change in structure?*

The proposed change in structure was initiated by the Trustees. The APS Trustees have consulted with BA and the NAPS Trustees have sought approval from BA, because BA's consent is required to amend the NAPS Trust Deed and Rules.

The Trustees have considered conversion to a Corporate Trustee structure on various occasions since 1999. BA was formally approached to begin the conversion process in the summer of 2014 but, given the complexity of the Scheme and the process of consulting with BA, the project has taken some time to near completion.

5. *How much will the change to a Corporate Trustee structure cost for the Scheme? What are the ongoing costs of running the Corporate Trustee?*

The complex structure of the Scheme has meant that legal advice has been required to ensure the change of structure is properly implemented. The Trustees considered the cost of the project before deciding to proceed and concluded that the longer term advantages to the Scheme and Members and Pensioners outweighed the costs. The ongoing costs of the Scheme are not expected to increase as a result of the structure change.

Adviser costs (for example fees for lawyers, actuaries, auditors and accountants) are typically paid from the assets of the Scheme and whilst the Trustees do not release information on individual project costs, the overall cost of external advisers each year is made available to the membership via the Annual Report and Accounts.

6. *Have any banks or investment companies refused to do business with the Scheme or offered inferior terms because of the existing structure?*

The reference to the investment opportunities in the letter is forward looking. At present, the Trustees consider they are able to obtain fully competitive terms for investments, albeit the Scheme's current structure often requires additional time and legal costs to make counterparties comfortable transacting with a collection of individual trustees rather than with a corporate entity. It is envisaged that this situation may become more onerous in the future as the number of counterparties in the market reduces and the demand for hedging instruments increases. Moving to a corporate structure will ensure that, as required, the Trustees continue to obtain fully competitive terms for transactions and to maximise the choice of contracting counterparties.

7. *Will the change in structure have any effect on the obligations of BA to the Scheme?*

The change to a Corporate Trustee structure does not involve any changes to the obligations of BA to fund the Scheme.

8. *Will the change in structure alter the ability of the Scheme to enter the Pension Protection Fund (PPF) if this was needed in the future?*

The change to a Corporate Trustee structure will not affect the eligibility of the Scheme to enter the PPF.

Questions regarding the appointment of MNDs

9. *Do the Members need to agree to the method of appointment of the first Member Nominated Directors?*

It is not a statutory requirement to obtain the agreement of the Scheme's Members or Pensioners to the proposed method of appointment of the MNDs. Please also note that the following comments are not relevant to BA's appointment of the Employer Nominated Directors (ENDs).

On appointment of the Corporate Trustee as trustee of the Scheme, the legal position is that the current MNTs can validly act as Trustee Directors of the Corporate Trustee. The ENDs will also become Trustee Directors of the Corporate Trustee.

Under the Pensions Regulator's Code of Practice 08 "MNT/MND – putting arrangements in place", the Trustee Directors will have six months from the appointment of the Corporate Trustee to put in place MND arrangements and a further six months to implement those arrangements. The appointment of the Corporate Trustee as trustee of the Scheme can therefore proceed before the proposed method of appointment of the MNDs is finalised.

The reason for seeking feedback from Members and Pensioners on the proposed method of appointment was that the legal advice the Trustees received was that, technically, a nomination and ballot process for all MNDs should be undertaken after the MND arrangements have been adopted. It is however less clear how this should be applied in practice when transitioning from MNT to MND arrangements. A full election process might make sense in a scenario where the existing MNT arrangements may be sub-optimal in some way, or the MND arrangements being adopted are not the same as those currently in place making it inappropriate for the current MNTs to become the MNDs.

These factors do not apply here. In addition, the legal advisers commented that it is common practice for schemes to take the pragmatic approach of rolling over the MNTs that were in office at the date of the change to become the MNDs, with each MND remaining in post until his or her current MNT term of office expires. The advice received is that this approach is proportionate and fair because the Members and Pensioners had voted for the MNTs and their terms of office would not be altered. In light of this, the expense involved in conducting ballots and the potential for loss of experience and continuity, the Trustees are proposing that the current MNTs should be transferred across as detailed in our August letter to you.

The Trustees thoroughly debated the approach to be taken to appointing the first MNDs. The Trustees wanted to be transparent with Members and Pensioners about the proposed approach to provide a clear opportunity for any concerns to be raised.

10. *Will the composition of the Corporate Trustee continue the 50:50 split between Trustees appointed by BA and Trustees appointed by the members?*

The current 50:50 split between ENds and MNDs will continue. The current election process and the split between active and pensioner nominated trustees will be carried over to apply to the Corporate Trustee.

11. *Has finding Trustees to appoint been difficult under the current structure?*

Both BA and the membership have had difficulty finding Trustees to appoint at times. For example, the last NAPS Cabin Crew vacancy took two approaches to the membership before potential candidates came forward.

12. *Will the Trustee Directors appointed by BA be common to APS and NAPS as they are currently?*

There will be two separate Corporate Trustees, one for APS and one for NAPS. It is expected that the same six individuals will be appointed by BA to act as ENds of both the APS Corporate Trustee and the NAPS Corporate Trustee. The six MNDs of the APS Corporate Trustee will be chosen by the APS Members and Pensioners and the six MNDs of the NAPS Corporate Trustee will be chosen by the NAPS Members and Pensioners. This mirrors the existing structure of the current Trustee Boards.

Other questions raised

13. *Will the proposed changes breach the provisions of Clause 16 of the NAPS Trust Deed?*

This is something on which the NAPS Trustees sought legal advice.

The legal advisers confirmed that the change to a Corporate Trustee structure would not breach the provisions of NAPS Clause 16 provided that the principle of equal representation of ENds and MNDs is maintained in the NAPS Corporate Trustee structure.

14. *Is the limited liability of the Corporate Trustee in Members' interests? How will the performance of the Corporate Trustee be monitored?*

Currently, the individual Trustees have the protection of exoneration and indemnity clauses in the Trust Deed so they are only personally liable in limited circumstances, such as fraud and certain breaches of trust if they had acted recklessly. After the conversion to a Corporate Trustee, the Trustee Directors are subject to the same personal liability as directors of any company. For example, in cases of fraud or a breach of directors' duties under the Companies Act 2006, the Trustee Directors can be made personally liable.

The performance of the Trustee Directors will be monitored in the same way as the performance of the individual Trustees is currently monitored.

15. *Will APS and NAPS remain completely separate Schemes? Will they remain separate from other BA Schemes?*

There will be two separate Corporate Trustees, one for APS and one for NAPS. The structure of APS and NAPS as separate Schemes is not something which has been discussed as part of the change to a Corporate Trustee and is not something being considered by the Trustees. APS and NAPS will also continue to remain separate from the British Airways Retirement Plan, the defined contribution scheme operated by BA.

16. *The letter says that "the rules that govern the behaviour of the Corporate Trustee will remain broadly the same as the rules that currently govern the behaviour of the Trustee Board". Is the word 'broadly' concealing disadvantageous changes to Members? Are there any reasons for the change that were not covered in the August letter?*

The word "broadly" is used here to cover the technicalities of managing and running a company rather than acting as a group of individuals.

In making the change to a Corporate Trustee structure, the intention has been to ensure that the rules governing the behaviour of the Corporate Trustee are the same as the rules that currently govern the behaviour of the Trustees. However, the current Trustees are individuals whereas the Corporate Trustee will be a company. The Corporate Trustee, like all companies, will be subject to overriding legislation, such as the Companies Act 2006. This legislation does not apply to the individual Trustees. For example, the appointment and retirement of Trustee Directors must be filed with Companies House; this does not apply to the appointment and retirement of individual trustees.

The Trustees have considered these differences to the governance of the Scheme and concluded, on the basis of legal advice, that it is reasonable to proceed with the change to a Corporate Trustee structure. To confirm, the Scheme rules relating to the amount of, and payment of, pensions will not be affected by the appointment of the Corporate Trustee.

The reasons for the change are as outlined in the [August letter to Members and Pensioners](#); there are no hidden reasons for the change.

17. *If you are setting up a Trust Corporation there will be a substantial share capital requirement, how will that be funded?*

The new structure does not involve setting up a Trust Corporation. Each Corporate Trustee will be a company limited by guarantee so it will not have shares and will have no share capital.

18. *Will the Corporate Trustee Company have its own personnel? Is this an outsourcing?*

The existing arrangements for the operation of the Scheme will continue and this is not an outsourcing to a third party. British Airways Pension Services Limited, which employs its own staff, will continue to deal with the administration of the Scheme under the new

structure, including providing a helpline for the membership. The day-to-day management of the Scheme's investments will continue to be delegated to British Airways Pension Investment Management Limited, which also employs its own staff.

19. *Will the Scheme continue to operate under English law?*

Yes.

20. *Has the Pensions Regulator been advised about the proposed changes and do they have a view on them?*

The Pensions Regulator has been informally advised and has not offered any specific views on the matter.

21. *Can you make the complete minutes of the decision-making process and the legal advice the Trustees have received available to Members?*

It is not the policy of the Trustees to release complete minutes or legal advice. (Historically, redacted minutes which remove confidential, commercially sensitive items and legally privileged matter have on occasion been provided.) The Trustees feel it is more effective to communicate via Quarterly Newsletters, In Focus and specific communications to the membership such as the letters regarding the Corporate Trustee. The Trustees will make Members and Pensioners aware of the general steer of legal advice received where appropriate.

22. *Is this structural change linked to the delay in the outcome of the 2015 Valuation being published?*

The proposed change to the Corporate Trustee structure is not linked to the Valuation nor does it affect the outcome or the timing of the Valuation results. Further information on the delay in finalising the 2015 NAPS Valuation can be found by clicking on the following link:

[Message from the NAPS Trustees - 31 March 2015 Funding Valuation](#)

23. *Why have Members been given a short timescale for asking questions during peak holiday time?*

The membership was given four weeks to respond to take into account that it was a peak holiday time. The majority of the questions which have been received are of a similar nature and the membership will have access to the full range of topics queried via this FAQ document, so will benefit from seeing answers to questions others have raised. Most questions were received shortly after the letter was issued.

Next steps

24. *What if I still have questions?*

The Trustees are expecting to progress the conversion to a Corporate Trustee on 28 September 2016. Comments received in relation to the appointment of the MNDs on or before Friday 23 September will be taken into account by the Trustees on 28 September.

Date: 19 September 2016