

## **APS discretionary increase judgment FAQs – updated for BA appeal**

### **1. What was the trial about?**

Each year, we increase members' pensions in line with the Pensions Increase (Review) Order which is based on the Government's measure of inflation. In 2010, the Government changed this measure from the Retail Prices Index (RPI) to the Consumer Prices Index (CPI). This is generally expected to mean lower increases for members. In 2011 we decided to introduce a new power that would allow us each year to consider a further, discretionary increase. In 2013, we exercised that power by granting a 0.2% discretionary increase. In December 2013, BA brought a legal claim against the use of that power and, as you will know from previous updates available on the ['News'](#) page, a trial started in October 2016.

### **2. What does the judgment say?**

The Judge's key decisions are as follows:

- our decision in 2011 to introduce the discretionary increase power into Rule 15 was valid;
- our decision in June 2013 to award a 0.2% increase was not valid due to the lack of an effective date for the increase; and
- our decision in November 2013 to grant a discretionary increase of 0.2% for that year with effect from 1 December 2013 was valid.

### **3. Is BA's litigation finished now?**

No – at a hearing on 25 May 2017, the High Court considered BA's applications for permission to appeal part of the judgment. The Judge decided that BA should be allowed to appeal his decision on two technical points. These two points are:

- the APS trust deed prohibits us making "benevolent or compassionate" payments and the judgment concluded that discretionary increases were not "benevolent or compassionate".
- the APS amendment power cannot be used to amend the purposes of the Scheme, and the judgment decided that by introducing and using the discretionary increase power the Trustees did not act inconsistently with the purposes of the Scheme or act for an "improper purpose".

The Judge made clear that he did not consider that his findings on these points were wrong. He gave BA permission to appeal because he accepted that there was a possibility (meaning it was "more than merely fanciful") that the Court of Appeal may disagree with his decisions on these technical points.

BA's appeal does not challenge the High Court Judge's findings that the then Trustees and their advisers acted appropriately in relation to the 2011 and 2013 decisions – the appeal will not change this conclusion.

#### **4. How does the appeal process work? How long does it take?**

The Court of Appeal will decide whether it agrees that these two points of the High Court judgment were correct. Given the Court of Appeal's heavy caseload, it could take a further 18 months or longer to obtain a judgment from the Court of Appeal. By giving leave to appeal, the Judge has shortened the length of the appeal process. Had the Judge refused, BA would have been able to ask the Court of Appeal for permission to appeal, which if given, might have added a further six months to the appeal process.

#### **5. When will I be paid a discretionary increase?**

At BA's request, the Judge also granted an order (known as an injunction) which means that we are not allowed to pay out the 0.2% increase awarded on 19 November 2013 to members until judgment is given by the Court of Appeal. If the Court of Appeal dismisses BA's appeal, the injunction will fall away.

The Judge expressed sympathy for the affected members and stated that, in light of an ongoing appeal process, the Trustee may not have felt able to pay members the 0.2% until the outcome of the appeal was known. The Judge decided that he should grant the injunction but that in exchange members will be entitled to be paid interest at 2% above base rate on that 0.2% increase from 25 May 2017 until the date of the Court of Appeal's decision. This is by way of compensation for the delay caused by BA's appeal and is payable in the event that BA's appeal is unsuccessful. BA would be required to pay or fund the interest.

#### **6. Now that the judgment has been received, when will the APS Valuation be completed?**

In a [Message from the APS Trustees](#) published in July 2016, it was explained that it was unlikely that we would be able to conclude the APS 31 March 2015 Valuation until the outcome of the litigation was known. In light of BA's appeal, we are considering the position with our professional advisers.

#### **7. How much did the trial cost and who is paying for the costs of the legal proceedings? If the costs came out of the Scheme assets, does that mean the members pay?**

As BA would not agree to meet the Trustees' costs of defending the litigation, at an early stage, we asked the Court to confirm that it was reasonable for us to defend BA's claim (which the Court confirmed). The limited costs of seeking this confirmation from the Court were paid out of the Scheme assets.

BA and the Trustees subsequently agreed an order (which the Court approved) that BA must pay the rest of the costs and expenses incurred by us in defending the High Court claim. BA offered (and the Court ordered) that it will meet the Trustee's costs associated with BA's appeal to the Court of Appeal.

At the end of the proceedings, if BA thinks that the costs were not reasonably incurred, BA can demand that the costs be reviewed by another court process.

**8. Is the Trustee planning to make backdated increases for the past few years?**

Rule 15 requires us to consider at least once a year the rate at which pensions in payment and deferred pensions increase, and whether a discretionary increase should be made. The decisions relating to the years 2014 – 2017 are on hold pending the outcome of BA's appeal.

**9. If you win the appeal, is it fair to assume that further discretionary increases would be made going forward?**

Rule 15 requires us to consider at least once a year the rate at which pensions in payment and deferred pensions increase, and whether a discretionary increase should be made. The history of no increases in 2011 and 2012 and the small increase in 2013 shows that the increase decision has been carefully considered every year so far (though 2014 - 2017 are on hold pending the outcome of BA's appeal) and, as noted above, the rules would require us to repeat the exercise at least annually. Discretionary increases would only be awarded if and when it is appropriate to do so.

**10. Where can I find any more news on this?**

As before, we will keep members updated on developments as and when we are able to do so and in the event that there is some news to report. News will be reported by us primarily on the member website.

Date: 6 June 2017