

**Captain Mike Post  
Chairman of the Association of British Airways Pensioners**

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**By e-mail**

**Dear Mike**

**Airways Pension Scheme (APS)**

**Thank you for your letter of 18 September 2017.**

**We continue to work with BA on the 2015 actuarial valuation for APS and we are maintaining dialogue with The Pensions Regulator on its progress.**

**As you are aware, the discretionary increase (DI) power under the APS Rules requires the Trustee to consider at least annually whether to award a DI above the rate specified in the Pensions Increase (Review) Order (currently based on CPI), subject to taking professional advice as appropriate.**

**For the years 2011 and 2012, we decided in Board meetings in those years that no DI should be awarded. For 2013, the High Court recently upheld the 0.2% DI awarded with effect from 1 December 2013. In your letter, you ask the Trustee to inform the membership about the DI decisions for 2014, 2015, 2016 and 2017.**

**In line with the Rules, we have made an annual decision about the years 2014 - 2017 after considering professional advice. For each year, we concluded that, in view of the ongoing legal action brought by BA, no DI would be awarded at that time. If and when the position to award DIs is confirmed by the Court, then we will consider the issue of making a DI for 2014 - 2017. These decisions were communicated to members in letters enclosing their annual pension increase statement.**

**While the High Court has confirmed the power to award DIs, this judgment remains subject to BA's appeal. The FAQs issued on the member website following the release of the High Court judgment noted that the decisions relating to 2014 - 2017 are on hold pending the outcome of BA's appeal.**

**We do not intend to decide whether to award DIs for 2014 - 2017 at this time for the following reasons:**

- **You note that there is an injunction in place to stop the Trustee paying the 2013 DI until BA's appeal has been decided. Although the injunction does not apply to DIs for 2014 - 2017, BA has confirmed to us that it would not expect there to be any DI decisions until after the appeal outcome is known.**

- In the judgment of 25 May 2017, the Judge clearly explained the legal and practical difficulties for the Trustee in paying out the 2013 DI before the outcome of the appeal is known. Similar difficulties apply to announcing the amount of, or seeking to pay, DIs for 2014 – 2017 now. For example, members might be informed of the 2014 – 2017 DIs but because of the existence of the appeal, members would have to be told that it might emerge in around a year's time that these DIs cannot be, or should not have been, paid. The Judge also referred to the legal challenges around our obligation to act in line with the APS Rules and recovering DIs paid out by set-off against future payments.

We understand well that DIs are a sensitive matter for members and do not consider it is appropriate to raise members' expectations in a way that we may not be able to meet.

- It would be difficult for us to justify not taking into account the Scheme's circumstances at the time of payment of the DI. In practice, this means there is very limited scope to award a DI with a later effective date for payment. For example, if the amount of the 2014 – 2017 DIs were to be determined now with payment conditional on the Courts confirming the validity of the DI power, it is possible that the funding and covenant positions could be very different at the time of payment of those hypothetical 2014 – 2017 DIs.

We are acutely aware of the APS members who have died since 2013 and we hope you will recall that at the 25 May 2017 hearing the Trustee's QC put forward a robust case in favour of the 2013 DI being paid out notwithstanding the appeal.

You also notified us that ABAP intends to request a members' meeting under Rule 25 should the members have received no information about the 2014 – 2018 DI decisions before the appeal judgment is released (expected summer 2018). We trust that you will understand based on the reasons above that it would not be appropriate or productive to award DIs for 2014 – 2018 until the power to award DIs is confirmed by the Courts.

We would like to reassure you that we are preparing so that, in the event that the Court of Appeal agrees with the High Court, decisions on DIs for 2014 – 2018 can be made as soon as reasonably practicable after the appeal judgment is published. It is possible that, if BA loses at the Court of Appeal, it might be allowed to appeal to the Supreme Court. In these circumstances, we might need to wait until the outcome of the Supreme Court hearing is known. We appreciate that these circumstances would be disappointing for members and would ask for your understanding of the legal restrictions that constrain us.

Finally, in line with your request a copy of your letter has been shared with all APS and NAPS Trustee Directors.

Yours sincerely

Virginia Holmes  
Chair of Airways Pension Scheme Trustee Limited

cc Steve Gunning, British Airways plc