

Discretionary increase litigation – Court of Appeal judgment

Discretionary increases ruled not valid by Court of Appeal

On 5th July 2018, the Court of Appeal released its judgment in the appeal brought by British Airways (BA) in relation to APS discretionary increases. In May 2017, the High Court had ruled that the APS Trustees' introduction of a discretionary increase power in 2011 and grant of a 0.2% increase effective from 1st December 2013 were valid. BA appealed to the Court of Appeal on two technical points: first, whether the APS amendment power could be used to introduce the discretionary increase power; and secondly whether discretionary increases were "benevolent or compassionate" payments which are prohibited under the APS trust deed.

The Court of Appeal has ruled in favour of BA on one of its technical points, accepting its appeal that both the introduction and use of the discretionary increase power by the APS Trustees were not valid. Three Lord Justices (or judges) make decisions at Court of Appeal hearings and this was a majority decision in favour of BA. Two of the three Lord Justices concluded that the APS amendment power could not be used to introduce the discretionary increase power. One of the Lord Justices decided that the introduction and use of the discretionary increase power was valid.

The APS trust deed prohibits us making "benevolent or compassionate" payments and the other technical point raised in BA's appeal was that discretionary increases were "benevolent or compassionate". The Court of Appeal unanimously rejected BA's appeal on this point.

A copy of the full judgment will be made available in the "Other news" section of the member website on 5th July 2018.

We have asked the Court of Appeal for permission to appeal its decision. BA has also asked for permission to appeal the decision on the "benevolent or compassionate" restriction. We will confirm the outcome of these requests as soon as possible.

Asking for permission to appeal is a protective step to keep our options open. We are analysing the full implications of the judgment with our professional advisers and assessing our next steps, including whether to appeal to the Supreme Court if permission to appeal is granted. The Court of Appeal's decision does not change the High Court Judge's findings that the then APS Trustees and their advisers acted appropriately in relation to the 2011 and 2013 decisions.

Members should be reassured that the pensions which they are currently receiving (which to date have received only increases based on Pensions Increase (Review) Orders) will not be affected.

As before, we will continue to keep members updated on developments as soon as we are able to do so. In the intervening period, given the complex nature of the proceedings, we do not currently intend to make further public comment.

Further information on the High Court decision in 2017 is available here: [\[link\]](#). This additional information, shared with you in June 2017, gave more detail on the background to discretionary increases and the related court processes.

From the Trustee of the Airways Pension Scheme

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