

ABAP Presentation to OPA 12th March 2020



Airways Pension Scheme (APS)

- Established in 1948 by Trust Deed
- Covers BA and predecessors BOAC, BEA, BSAA
- Public sector style scheme due to being state owned corporations
- Still open to future accrual, closed to new members
- 264 serving staff
- 16137 pensioners
- 6101 dependent pensioners
- 748 deferred members
- A very mature scheme, managed by Trustees

THE AIRWAYS PENSION SCHEME

TRUST DEED

THIS DEED is made 8 October 1948 **BETWEEN** BRITISH OVERSEAS AIRWAYS CORPORATION BRITISH EUROPEAN AIRWAYS CORPORATION and BRITISH SOUTH AMERICAN AIRWAYS CORPORATION^(a) (hereinafter called "**the Corporations**") of the first part GRAHAME TEMPLE MELLER of Whiteoaks Horley Surrey Chartered Accountant ALAN RAYMOND ESDEN of 97 Albemarle Road Beckenham Kent Chartered Accountant JOHN EDWARD VALENTINE TYZACK of Stratton Chase Chalfont St. Giles Buckinghamshire Staff and Services General Manager RANKIN LORIMER WEIR of 2 Bromley Close South Croydon Chartered Accountant LORD KERSHAW of 39 Sheen Common Drive Richmond Surrey Member of the Board of British South American Airways Corporation BERNARD GEORGE PORTER of Staplegrove Richings Way Iver Buckinghamshire Chartered Secretary JOHN WYNFORD GEORGE JAMES of Manfield House Iver Heath Buckinghamshire Chief Airline Pilot REGINALD VERNON FRANCE of 46 Dymchurch Road Speke Liverpool 19 Freight Clerk JAMES MILLER of 70 Kings Road Berkhamstead Hertfordshire Radio Officer THOMAS LLOYD of 4 Heol Pantycelyn Corryton Whitchurch Glamorganshire Fitter EDWARD WILLIAM CARTER of 28 Elmbank Avenue Englefield Green Egham Surrey Aircraft Loader AVON SPURGIN LUCKING of 4 Richmond Avenue East Bedfont Feltham Middlesex Instrument Inspector (hereinafter called "**the Management Trustees**" which expression shall include the Management Trustees for the time being) of the second part and BRITISH AIRWAYS PENSION TRUSTEES LIMITED^(b) (hereinafter called "**the Custodian Trustees**" which expression shall include the Custodian Trustees for the time being) of the third part

“The Big Split” January 1984

- BA announces APS to be closed to future accrual
- APS offers ***full inflation protection***
- Too big a burden for a privatised company
- New Airways Pension Scheme (NAPS) to be set up
- NAPS inflation protected up to 5%
- Staff offered a choice:
- *Remain in APS, retain existing benefits, pay 7.25%*
- *Move to NAPS, take lump sum, pay 5%*
- Change to take place on 1st April 1984
- 50% stay in APS, 50% move to NAPS

APS events after 1984 - 1

- 1989 - Scheme in surplus by £494m
- BA commences a contribution holiday
- Benefits improved for serving staff but not pensioners
- Complaint to Ombudsman, who rules Trustees failed to consider pensioners
- 1999 - BA proposes merging APS & NAPS
- Vigorous campaign by APS members opposing merger
- 2000 - Merger halted after 80% of APS members vote against

APS events after 1984 - 2

- Trustees decided to seek High Court clarification of who “owns” the surplus (£820m by this time)
- 2001 - High Court rules that BA controls the surplus
- 2002 - Decision reversed on appeal
- BA & Trustees decide not to appeal this decision
- 2002 - BA ends contribution holiday, APS surplus reducing, NAPS in deficit
- 2003 - NAPS benefits reduced, normal retirement age increased. APS left unchanged

APS events after 1984 - 3

- 2010 - More reductions in NAPS, APS pensionable pay restricted for serving staff
- Both schemes at risk of closure to future accrual
- Deficit recovery programmes for both schemes
- 2011 - Government changes review orders from RPI to CPI (RPI on average 1% higher than CPI)
- Assertive campaign by APS members to keep RPI in line with 1984 commitment to “full inflation protection”
- Trustees decide to adopt a discretionary increase (DI) regime and make a rule change permitting this

APS events after 1984 - 4

- 2011 – APS moves to CPI for annual increases
- Trustees agree that a DI of 50% of the gap between RPI and CPI is affordable
- 2012 - Downturn in funding prevents increase
- 2013 – Revised advice from actuary allows Trustees to allow a 0.2% DI, after a series of internal votes
- BA opposes the increase and launches legal action against the Trustees, both member elected and company appointed
- 2018 - NAPS closes to future accrual, APS remains open

The Legal Action - 1

- 2014 - BA refuses Trustees their entitled cost indemnity, potentially exposing them to ruinous personal costs
- A “Beddoe” hearing is planned, involving a representative beneficiary to argue that the Trustees should have their cost indemnity
- Hearing takes place in July 2014, judgement handed down in September
- BA strongly criticised for its actions, funding granted to Trustees for their defence
- Changes made to Trustee structure, from individual trustees to a Trustee Board with directors

Representative Beneficiary

- Used in all the APS legal cases to date
- Not an advocate as in the form of a TU rep, local councillor or MP
- Representative of the body of the membership as a whole, allowing their interests to be heard
- Collaborative team of one or more scheme members, solicitors and barristers
- Costs are paid by the scheme or trust
- Route to obtaining specialist expert legal representation

The Legal Action - 2

- 2015 – preparations for the main hearing start
- Significant requests from BA for disclosure, increasing the scope, time and costs required
- 7 week hearing takes place Oct.- Dec. 2016
- BA's counsel strongly criticises Trustees and scheme actuary with a wide range of accusations
- Judgement given in favour of Trustees in May 2017
- Trustees and scheme actuary completely vindicated
- BA appeals the judgement and 2013 increase injuncted.

The Legal Action - 3

- May 2018 – BA's appeal is heard in the High Court
- July 2018 – BA partially wins appeal on a split decision and on one point only
- Trustees granted permission to appeal to Supreme Court
- August 2018 – APS members encourage Trustee to exercise its option to appeal
- September 2018 – Trustees announce they will appeal

The Legal Action - 4

- Second Beddoe hearing is required to obtain funding for the Trustee appeal
- Hearing held Dec. 2018. BA opposes funding
- Judgement given in favour of Trustee Jan. 2019 giving them funding for the appeal
- Behind the scenes, BA opened negotiations with the Trustee to reach a settlement
- Trustee agrees settlement with BA in April 2019
- Settlement gives payments backdated to 2013 and a forward looking structure for RPI equivalent increases

The Legal Action - 5

- Trustee requests High Court to approve settlement
- Representative Beneficiary involved to represent scheme members, alongside BA & Trustee
- Intensive of period of work examining the settlement and possible alternatives, summer & autumn 2019
- High Court hearing in Nov. 2019 approves the settlement
- Payments to members commence Dec. 2019
- DI regime in place to get back to RPI equivalent increases by April 2021

What this means for the Trustee & BA

- All legal action is ended & a better relationship exists
- Outstanding 2015 & 2018 valuations completed
- Trustee has unfettered access to scheme surplus (scheme was at 112% funding as of April 2019)
- BA ceases funding of APS unless deficit reappears
- £250m BA had reserved for any APS deficit can be released to NAPS
- Scheme now stands independently from employer
- RPI equivalent increases affordable for the foreseeable future, backed by BA £40m guarantee if required

The Future of RPI

- RPI ceases as a live index & aligned with CPIH
- Government to consult on when that should be, between 2025 & 2030
- End of RPI has big implications for both scheme investments and member benefits – for all schemes
- For “baked in RPI”, what should be the measure?
- RPI is consistently higher than CPI by about 1% p.a.
- Compensation for holders of RPI investments?
- Protection for scheme members who have an expectation of RPI?
- ABAP will be responding to the consultation, aided by professional advisers

Postscript – 4th April 2020

The foregoing presentation was given to the OPA meeting on 12th March 2020, before the full effects of the coronavirus situation became known.

British Airways is about to ground most of its fleet and run a skeleton service for at least the next few months. It is also reported to be furloughing 36,000 staff, taking advantage of the government support scheme for employees. IAG (BA's owner) has substantial cash reserves and is obviously trying to minimise the rate at which they are being used up. The company has stated it does not need direct government support.

APS (Airways Pension Scheme) is still in a strong position with extensive de-risking and liability insurance buy-ins. If BA were to become insolvent, the funding level of APS is expected to be sufficient such that benefits well above PPF levels are affordable. So it is very unlikely that the Scheme would need the support of the PPF.

NAPS (New Airways Pension Scheme) is still depending on BA for funding to cover the existing deficit. If BA were to become insolvent, it is by no means certain that NAPS would be sufficiently funded to pay benefits above PPF levels and so NAPS could require the support of the PPF. If such a BA insolvency event occurred, the level of the Scheme's funding would need to be assessed at that time before a decision could be made to run the Scheme on or to enter the PPF. This is a complicated process and the PPF notes that it takes an average of two years to complete.

So there's a stark difference between the two schemes but all serving and former staff are hoping for the continued existence of British Airways.