

Discretionary increases ruled valid by the High Court – FAQs

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.

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.

Can BA appeal the High Court decision?

BA will need permission to appeal the decision – which it will need to request from the trial judge when the judgment is given and / or from the Court of Appeal within 21 days of the judgment. The Court can extend these time limits. Because of the Court of Appeal's heavy caseload, it could be many months before it can consider any request from BA to appeal the judgment. If BA is allowed to appeal, it could take a further 18 months from that point to obtain a judgment from the Court of Appeal.

When will I be paid a discretionary increase?

As BA could still decide to request permission to appeal the judgment, it may be necessary to wait until the legal position becomes clear before a discretionary increase can be paid.

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. At this stage we do not know whether BA intends to seek permission to appeal and are considering the position with our professional advisers.

**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 to date in defending the claim. 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. If there is an appeal, we will need to wait until the legal position becomes clear before we can confirm the position on future costs.

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

The Court has decided that Rule 15 was validly amended to introduce the discretionary increase power in 2011. 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 the Court case. As BA could still decide to seek permission to appeal the judgment, it may be necessary to wait until the legal position becomes clear before any backdated discretionary increase can be paid.

Now that you have won the case is it fair to assume that further discretionary increases will be made going forward?

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 the Court case) and, as noted above, the rules require us to repeat the exercise at least annually. Discretionary increases will only be awarded if and when it is appropriate to do so.

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.

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