

## Ombudsman's Determination

Applicant	Mr S
Scheme	New Airways Pension Scheme ( <b>NAPS</b> )
Respondent	British Airways Health Services ( <b>BAHS</b> )

## Outcome

1. Mr S' complaint is upheld and, to put matters right, BAHS shall re-take its decision under Rule 14, having first obtained further medical evidence. It shall also pay Mr S £500 for significant non-financial injustice.

## Complaint summary

2. Mr S disagrees with the decision not to award him ill health retirement benefits.

## Background information, including submissions from the parties

### Background

3. Mr S was employed as a pilot by British Airways plc (**BA**) until 25 August 2017. He had been absent from flying duties on the grounds of ill health since April 2016. In April 2016, BAHS had referred Mr S to a consultant psychiatrist, Dr Arkell, who diagnosed Generalised Anxiety Disorder. Summaries of and extracts from the medical evidence relating to Mr S' case are provided in the Appendix.
4. Mr S was reviewed by BAHS on 20 April 2017. The BAHS doctor, Dr Popplestone, concluded that he was unfit to return to work. Mr S was reviewed by Dr Popplestone again on 28 July 2017. He concluded that Mr S was unfit to return to work and unlikely to be fit by October 2017; that is, 18 months after his sickness absence had commenced.
5. Mr S also met with BA on 28 July 2017. BA then wrote to Mr S, on 31 July 2017, setting out the details of the meeting and referencing its absence management process (**EG300**). BA referred to Dr Popplestone's opinion and noted that Mr S had agreed that this reflected his current situation. BA said that, because Mr S had been unfit to fly for 15 months and in view of the information from BAHS, it was giving him three months' notice of the termination of his contract of employment. It noted that Mr

S had decided to waive his notice period. BA said Mr S would be referred to BAHS for an assessment as to his eligibility for an ill health retirement pension.

6. On 4 August 2017, BA authorised the Scheme administrators, British Airways Pension Services Ltd (**BAPSL**), to pay Mr S an ill health retirement pension. BAPSL began paying Mr S' pension in September 2017, backdated to August 2017. It also paid him a lump sum.
7. On 21 August 2017, Mr S attended an appointment with a BAHS doctor, Dr Caddis. Following the consultation, Dr Caddis wrote to Dr Arkell requesting a report. He suggested that Mr S might be experiencing a degree of trauma stress reaction or a mild form of PTSD<sup>1</sup>. Dr Caddis asked Dr Arkell for his thoughts, prognostic indicators and a timeframe for any change if this was the case. Dr Arkell spoke to Dr Caddis on 14 September and provided a report on 27 September 2017.
8. Also on 21 August 2017, BA wrote to Mr S saying it had received the paperwork for the termination of his employment "on the grounds of medical incapacity" and said the date he would leave would be 25 August 2017. It then referred to an award under the British Airways Pilot Officers Loss of Licence Scheme (**Loss of Licence Scheme**). Under this scheme, Mr S was paid a lump sum of £192,188.
9. On 24 October 2017, Dr Caddis informed Mr S that he had concluded that he did not meet the criteria for ill health retirement. He said:

"... I note that following a recent telephone assessment with Dr Arkell it is commented that you are having a general improvement and progress in terms of your mental health and continue to be engaged with local psychotherapy at the current time. When reviewing the IHR eligibility, we also consider whether there are any additional recommended treatments that are likely to be beneficial in your recovery (and whether that recovery will be [at] a level consistent with a return to flying). I do believe there is a trauma element to your current symptoms and that evidence based treatment using specialist counselling (specifically EMDR<sup>2</sup>) would be beneficial were you still to have ongoing symptoms. I note there is an estimated timeframe for review of medication by your GP of 6 months on current treatment were you still to be symptomatic it is likely that the course of additional psychological therapy would give a beneficial effect in a similar period of time.

Finally, one of the other points that the pension fund trustees have agreed in terms of whether you meet the criteria or not is whether you would reach a level of recovery within a period of 2 years. I do believe it would be reasonable to consider this would not be met both as by following the (appropriate) plan of pursuing the ongoing treatment to date and (were that to prove not to be

effective) pursuing an additional course of additional therapy – you would recover within this timeframe.”

10. Dr Caddis informed Mr S that his case could be reviewed by an external independent occupational health physician if he wished.
11. Mr S obtained opinions from Dr Arkell and his GP, Dr Chapman (see Appendix). He sent these to Dr Caddis. In response, Dr Caddis said these did not change his previous view.
12. BA informed BAPSL that the authorisation to pay Mr S ill health retirement benefits had been issued in error. Pension payments ceased from 1 November 2017.
13. Mr S' case was subsequently referred to Duradiamond for review. On 12 December 2017, the Duradiamond doctor, Dr Emslie, provided a response in which he agreed with the BAHS decision. Mr S provided Dr Emslie with a further email from Dr Chapman. Dr Emslie wrote to Dr Caddis saying the email reflected the opinion Dr Chapman had given in his earlier email and did not alter his opinion.
14. Mr S appealed the decision under the Scheme's two-stage internal dispute resolution (**IDR**) procedure. Stage one is undertaken by a decision-maker appointed by the New Airways Pension Scheme Trustee Limited (the **Trustee**). BAPSL requested some additional information from BAHS for the purposes of investigating Mr S' case. BAHS confirmed that Dr Popplestone had seen Mr S on 28 July 2017 under BA's EG300 absence management process. With regard to timescales, BAHS said the timescales referred to by Dr Popplestone began from the date Mr S was first absent from work. It said the timescale for ill health retirement purposes began from the date the member's contract of employment was terminated. BAHS confirmed that Mr S had been assessed by reference to his fitness to return to work as a pilot.
15. BAHS confirmed that Mr S' appointment with Dr Caddis, on 21 August 2017, had been for an ill health retirement assessment. It said Dr Caddis had requested "further specialist reports" before making a decision and had discussed Mr S' case with other BAHS doctors to ensure consistency. With regard to the criteria set out in NAPS Rule 14(b) (see paragraph 21 below), BAHS acknowledged that Mr S did not hold an appropriate licence and had lost his licence for medical reasons. It went on to say that Dr Caddis had, however, concluded that it was more likely than not that Mr S would become fit within the foreseeable future (two years). BAHS referred to criteria agreed between BA and the Trustee to assist in decision making (see Appendix). Briefly, these are:-
  - The individual must have a recognised medical condition under the International Classification of Diseases;
  - The individual should be unlikely to recover from the medical condition in the foreseeable future;

- There should have been no significant improvement in the condition for at least six months;
  - No recognised investigation, treatment or other intervention likely to lead to improvement in the condition should be planned or available; and
  - There should be no evident precipitating or aggravating factors likely or able to be resolved; including factors likely to resolve following termination of employment.
16. BAHS said Dr Caddis had informed Mr S that he had made a significant improvement over the past six months; evidenced by an improvement in daily activities, doing voluntary work, a general improvement in mood and wellbeing, and consideration being given to reducing his medication in the coming months. It said Dr Arkell had confirmed a general improvement in mood and wellbeing and Dr Chapman was considering reducing Mr S' medication. BAHS also said that there was additional treatment which was likely to have a favourable impact on Mr S' condition within a period of less than two years. It referred to specialist CBT<sup>3</sup> and EMDR. BAHS confirmed that it had sent Dr Emslie a copy of the medical records it held for Mr S.
17. In response to a query concerning the difference of opinion between BAHS and Mr S' doctors, BAHS said Mr S' doctors had not provided medical evidence to confirm that he was likely to remain unfit to fly for more than two years. It said Dr Chapman's opinion appeared to change after the ill health retirement decision had been made. BAHS said its opinion was based on the criteria in the NAPS Rules and guidance; specifically, that there had been an improvement in Mr S' condition which was likely to continue and there was additional treatment which could have been explored.
18. Stage two of the IDR procedure is undertaken by a committee appointed by the Trustee. Mr S' appeal was declined on the basis that the Trustee was satisfied that BAHS had followed the correct procedure and it had no power to pay an ill health retirement pension unless instructed to do so by BA. In the note of the IDR decision, the Trustee acknowledged that the wording of Rule 14(b) could be read as providing an automatic right to an ill health retirement pension if employment was terminated by BA due to ill health. The Trustee noted that, in practice, one test was applied for BA to decide whether employment should be terminated and a different test was applied to determine eligibility for an ill health retirement pension from the NAPS. It referred to Section 4 of BA's EG300 absence management policy (see Appendix), which it said used different criteria to the NAPS Rules. In particular, the Trustee noted that the individual's health was assessed from the date sickness absence commenced under EG300; whereas it was assessed from the date of the ill health retirement assessment under the NAPS Rules.

## The New Airways Pension Scheme Rules

19. At the time Mr S' employment ceased, the NAPS was governed by a supplemental deed dated 3 April 2008, which adopted a consolidated trust deed and rules. The NAPS Rules have since been amended by a supplemental deed dated 11 June 2019, which adopted an amended and consolidated trust deed and rules. The June 2019 supplemental deed states that the new trust deed and rules are "not intended to change the amount of any person's benefit entitlement ... nor to change the balance of power between the Principal Company and the Management Trustee". The provisions set out below are the same under both the 2008 and 2019 trust deeds and rules.

20. Clause 7 states:

"Management Trustees' powers of decision

The Management Trustees shall have full powers to determine whether or not any person is entitled to any pension benefit or other allowance from the Fund in accordance with the provisions of the Trust Deed and of the Rules and any other claim made upon the Fund and all matters questions and disputes touching or in connection with the affairs of the Scheme and in deciding any question of fact they shall have full liberty to act upon such evidence or presumption as they shall in their absolute discretion think fit notwithstanding that the same may not be evidence legally admissible or a legal presumption. The Management Trustees shall also have full power to determine all questions or matters of doubt arising on the construction or operation of the Trust Deed or Rules or otherwise relating to the Scheme ..."

21. Rule 14 states:

"Ill health pension

General

- (a) If a Member's employment with a Participating Employer is terminated before Normal Retirement Age by that Employer on the grounds of Medical Incapacity and the Principal Company so notifies the Management Trustees, the Member is entitled to an immediate yearly pension commencing on the date he ceased to be employed.
- (b) Except where a Pilot or an Officer and a Participating Employer have agreed that this paragraph (b) shall not apply, if before Normal Retirement Age a Pilot or an Officer –
  - (i) no longer holds an appropriate licence;
  - (ii) has lost that licence for medical reasons; and

- (iii) in the opinion of the Principal Company's medical adviser will not recover for the foreseeable future<sup>4</sup>;

his contract of employment will be terminated by the Participating Employer on the grounds of Medical Incapacity and the Principal Company will notify the Trustees accordingly.

- (c) If a Member's employment with a Participating Employer has ceased before Normal Retirement Age, the Member may within three months of the date of cessation of his employment, make an application to the Principal Company for an immediate yearly pension on the grounds of Medical Incapacity.
- (d) If the Principal Company grants such an application, it will notify the Management Trustees accordingly.
- (e) For the purposes of paragraphs (a) to (d) Medical Incapacity means incapacity –
- (i) from which the individual is unlikely to recover for the foreseeable future;
  - (ii) which prevents the individual from carrying out his normal duties even after reasonable adjustment; and
  - (iii) which prevents the individual from carrying out appropriate alternative employment where this is offered by a Participating Employer.
- (f) For the avoidance of doubt, paragraph (e)(iii) shall not apply in relation to any Pilot or Officer or if appropriate alternative employment is not offered by a Participating Employer ...”

### **Mr S' position**

22. Mr S submits:-

- BAHS contacted Dr Arkell for a report on his health, but did not contact Dr Chapman. The letter to Dr Arkell did not ask the crucial question as to whether he would be able to return to flying within two years.
- BAHS referred to requesting other specialist reports, but he has not been shown any other reports.
- The only other report referred to by BAHS is from a chartered clinical psychologist with whom he had four sessions in early 2016. It is unlikely that a

report which was over a year old would have much relevance to an assessment for ill health retirement.

- He obtained further opinions from Drs Arkell and Chapman; both of whom considered him unlikely to be able to return to flying within two years. He provided these for BAHS. It did not change its opinion.
- The BAHS doctor who assessed him only saw him for an hour and only contacted Dr Arkell.
- Despite having emails from Dr Chapman expressing the view that he considered it unlikely that he would be able to return to flying within two years, Dr Emslie said the “GP evidence confirms that expectation of clinical improvement ...”.
- In its IDR submission, BAHS said his medical practitioners had not provided medical evidence to confirm he was likely to remain unfit to fly for more than two years. BAHS now accepts that this is not true. It also said Dr Chapman’s opinion appeared to change after the ill health retirement decision had been made. However, Dr Chapman had not been asked for his opinion prior to the ill health retirement decision. Since being asked for an opinion in November 2017, Dr Chapman has maintained the same opinion.
- In a meeting with Dr Caddis, on 20 March 2018, he asked who would be better placed to make a diagnosis and prognosis on his health. Dr Caddis admitted that this would be Dr Arkell.
- All that he has asked for is equitable treatment and a decision which is based fairly on all of the relevant medical evidence and opinion.

23. Mr S made further submissions during the course of the investigation. He said he wished to make 13 submissions as follows:-

- The NAPS Rules have not been correctly applied.

The relevant rule is Rule 14 (see paragraph 21 above).

- In a correct construction of the NAPS Rules, there are only two limbs and he satisfies both.

The test for an immediate annual pension is set out in Rule 14(a) and, therefore has only two limbs: (a) termination of employment must occur on the grounds of Medical Incapacity; and (b) termination of employment must occur before Normal Retirement Age (**NRA**). He satisfies both because his employment was terminated on the grounds of ill health, as stated in letters from BA dated 31 July and 21 August 2017, and before NRA. On a true construction of the NAPS Rules, there is no discretion not to award an ill health retirement pension. Once the contract of employment has been terminated on

the grounds of Medical Incapacity, BA is required to instruct the Trustees accordingly.

Rule 14(b) requires consideration of the grounds for terminating employment to be undertaken before employment is terminated. It states that, in the event that he satisfies three criteria, his contract of employment will be terminated on the grounds of Medical Incapacity. It is agreed that he satisfied the first two criteria. In addition, BAHS has twice stated, on 20 April and 28 July 2017, that he meets the third criterion; that is, he will not recover for the foreseeable future. No medical evidence has been provided since to support a contrary position.

- The BAHS criteria document does not form part of the NAPS Rules and anything other than the definition of foreseeable future should not be considered.

BAHS has sought to rely on additional criteria which do not form part of the NAPS Rules. It is acceptable for BAHS and the Trustee to agree guidance to assist in making consistent assessments in cases of ill health retirement. However, the guidance cannot conflict with or purport to amend the NAPS Rules. The Trustee referred to the BAHS criteria as a separate test. This is incorrect. The only criteria which should be used to assess his case are those set out in the NAPS Rules.

- In any event, the BAHS criteria are satisfied.
  - He has a recognised medical condition which resulted in the termination of his contract of employment on the grounds of Medical Incapacity.
  - BAHS and Drs Chapman and Arkell all considered him unlikely to recover sufficiently to return to flying in the foreseeable future.
  - There had been no significant improvement in his condition over the previous six months. BAHS refers to some improvement but this does not meet the threshold of significant improvement.
  - There was no recognised investigation, treatment or other intervention likely to lead to an improvement in his condition. Dr Emslie discounted EMDR.
  - There were no evident precipitating or aggravating factors likely or able to be resolved and none were cited.
- The medical evidence shows that he meets the criteria for ill health retirement under the NAPS Rules.
- The BAHS opinion just prior to and just after termination satisfied the eligibility criteria under the NAPS Rules.



- Termination on Medical Incapacity under Section 4 of EG300 requires an opinion from BAHS that he is incapacitated and will be unable to do his job for the foreseeable future.

The termination of his employment was dealt with under Section 4.7 (Medical Incapacity). There is no material difference between Medical Incapacity under EG300 and Medical Incapacity under the NAPS Rules. The NAPS Rules do not make a semantic distinction to say something akin to 'terminated on grounds that amount to Medical Incapacity as defined here in the NAPS rules' or 'terminated on Medical Incapacity AND satisfying the additional criteria as follows'. They clearly state that the requirement is merely to have been terminated on the grounds of Medical Incapacity.

It is not possible for a contract of employment to be terminated under the NAPS Rules; there is no BA process for this. Therefore, the contract must be terminated under the EG300 process. If this is on the grounds of Medical Incapacity under EG300, that limb of Rule 14(a) must be satisfied. All of the necessary medical consideration must have been undertaken in order for a contract of employment to be terminated on the grounds of Medical Incapacity. Entitlement to a pension under Rule 14(a) should follow automatically.

The Trustee was incorrect in saying that termination of employment under EG300 used different criteria to that for ill health retirement under the NAPS Rules. In particular, it was suggested that a different time frame was used to assess incapacity under EG300 to that for the NAPS. This is incorrect.

- An award under the British Airways Pilot Officers Loss of Licence Scheme (1992) Guide requires BAHS to have stated that he is unlikely to have his certificate and licence restored in the foreseeable future.

This scheme and the provisions of EG300 may be outside TPO's remit, but his award is compelling evidence that BAHS was of the view that he was unlikely to return to flying in the foreseeable future. An award is made when, as a result of physical injury or illness: (a) the individual has lost their medical certificate and licence; (b) in the opinion of BA's principal medical adviser, s/he is unlikely to have these restored; and (c) employment is terminated on the grounds of medical incapacity. It would be perverse to assert that he could qualify under one scheme and not the other. BAHS are involved in both decisions.

- Dr Chapman has stated unequivocally that he was unlikely to recover in the foreseeable future.

For example, see Dr Chapman's email of 13 November 2017 (see Appendix). Dr Chapman's evidence was, however, incorrectly cited as evidence that there was an expectation of clinical improvement within the required timeframe.

- Dr Arkell has stated that he would be unlikely to recover in the foreseeable future.

For example, see Dr Arkell's email of 13 November 2017 (see Appendix).

- BAHS has not asked the right questions.

It failed to ask his medical practitioners whether, in their opinion, he was likely to recover sufficiently in the foreseeable future such that he could resume normal flying duties. Had it done so, Drs Chapman and Arkell would have responded with the opinion that he was unlikely to make such a recovery.

Dr Emslie applied the incorrect test by asking if he was likely to improve sufficiently to return to his own job or another job within the foreseeable future. This test does not apply to pilots.

- BAHS has not considered all the relevant evidence.

It failed to consider evidence from Dr Chapman because it was provided during the appeal process. The reason given was that the letter post-dated its August 2017 decision by more than three months. It was unreasonable to discount this evidence when the correct questions had not been asked of Dr Chapman in the first instance.

- A proper decision has not been made.

24. Mr S also points out that neither Dr Caddis nor Dr Emslie are specialists in psychiatry. He asserts that it is fundamental to a fair decision to recognise that an occupational physician with no specialism in the field in question cannot reasonably substitute his own view for that of a consultant specialist or treating GP. He suggests that the weight given to the opinions from Drs Chapman and Arkell should be paramount.
25. Mr S refers to a comment by Dr Caddis that he would be permitted by the regulator to remain on his medication while flying. He points out that he would have been required to be asymptomatic, either on or off medication, for a period of time and says that no medical evidence has been submitted to indicate that this would have been the case for him.
26. Mr S says that Dr Caddis met him for approximately 45 minutes and Dr Emslie did not meet him at all. Mr S points out that BAHS has, itself, said that a paper based exercise misses the nuances of a clinical consultation.

### **BAHS' position**

27. BAHS has explained that none of the doctors who were involved in Mr S' case still work with BA. It has prepared its response on the basis of its documentary records. BAHS' response is summarised below:-
  - Mr S feels that Dr Caddis should not have given an opinion based on a single consultation, but this is normal practice for occupational physicians providing advice for pension scheme trustees.

- The consultation with Mr S was not the only information Dr Caddis considered. He also wrote to Dr Arkell and received a response. He had all of Dr Arkell's reports and Dr Popplestone's clinical notes.
- Dr Caddis' clinical notes indicate that he believed that the reason for Mr S' slow progress at the time was that there could have been an underlying PTSD which was not being medically managed. Dr Arkell agreed that EMDR might be helpful but he felt that there would be no advantage to it in the circumstances. Since Mr S did not receive EMDR, it is impossible to know whether it would have been of any benefit.
- The criteria which had to be met in order that it could support Mr S' ill health retirement application were:-
  - Loss of licence – this had been met.
  - Licence loss was for medical reasons – this had been met.
  - No improvement over the preceding six months – there was suggestion of clinical improvement during this period and Dr Caddis did not feel this condition was met.
  - No further treatment options available – Dr Caddis felt that EMDR was an option. The notes suggest this was clinically indicated but Dr Arkell felt it was not practicable at that time.
  - Unlikely to recover in the foreseeable future – Dr Caddis felt this would be the case with the new treatment, but Dr Arkell and Dr Chapman felt Mr S would not recover.
  - No aggravating factors which could be removed – with the exception of flying, the reason for the job, there were no aggravating factors to be excluded.

## **Adjudicator's Opinion**

28. Mr S' complaint was considered by one of our Adjudicators who concluded that further action was required by BAHS. The Adjudicator's findings are summarised below:-

- Members' entitlements to benefits when taking early retirement due to ill health were determined by the scheme rules or regulations. The scheme rules or regulations determined the circumstances in which members were eligible for ill health benefits, the conditions which they must satisfy, and the way in which decisions about ill health benefits must be taken.
- In Mr S' case, the relevant rule was Rule 14 (see paragraph 21 above). Rule 14(a) provided that, if a member's employment was terminated before NRA on

the grounds of Medical Incapacity and his/her employer notified the Management Trustees of this, s/he was entitled to an immediate pension. Medical Incapacity was defined in Rule 14(e) as incapacity: (i) from which the member was unlikely to recover for the foreseeable future; (ii) which prevented him/her from carrying out his/her normal duties even after reasonable adjustment; and (iii) which prevented her/him from carrying out appropriate alternative employment where this was offered. Condition (iii) would not apply in Mr S' case because he was a pilot.

- Because Mr S was a pilot, Rule 14(b) might apply. This provided that, if the member: (i) no longer held an appropriate licence; (ii) had lost that licence for medical reasons; and (iii) in the opinion of BAHS would not recover for the foreseeable future, his/her contract of employment would be terminated by BA on the grounds of Medical Incapacity and BA would notify the Trustee accordingly. There was no discretion under Rule 14(b) to decide not to terminate the contract of employment on the grounds of Medical Incapacity or not to notify the Trustee accordingly.
- It was accepted by both parties that, in August 2017, Mr S met the first two conditions in Rule 14(b). The point at issue was whether he met the third; that is, was he likely to recover in the foreseeable future.
- BA had agreed with the Trustee that “foreseeable future” should be taken to mean two years. The Adjudicator noted that there had been some discussion as to when the two year period should begin to run. BAHS had stated that, for the purposes of Rule 14, the two years began from the date a member’s contract of employment was terminated. In the context of an assessment for ill health retirement, this was a reasonable approach to take. Thus, for Mr S to receive ill health retirement benefits under Rule 14, BAHS had to be of the opinion that it was more likely than not that he would not recover sufficiently to resume flying before August 2019.
- Mr S had argued that a contract of employment could not be terminated under the NAPS Rules and that the termination was carried out under BA’s EG300 process. In fact, Rule 14(b) stated quite clearly that the member’s contract of employment “will be” terminated by the employer. In other words, the termination of a contract of employment could be triggered by a decision made under Rule 14. The EG300 process was simply BA’s own internal process which it would follow in order to carry out something it had been required to do under Rule 14(b) if the conditions set out in that rule were satisfied.
- Mr S had referred to the definitions of Medical Incapacity under both the EG300 process and the Loss of Licence Scheme. However, Rule 14(e) defined Medical Capacity “For the purposes of paragraphs (a) to (d)”. It was this definition which must be referenced in Mr S’ case. That being said, one might expect the definition set out in the EG300 documentation to mirror that set out in Rule 14(e); since this was the process by which BA carried out what

it was required to do under Rule 14(b) when that requirement arose. The EG300 process was not, however, solely for the purposes of terminating employment on the grounds of Medical Incapacity under Rule 14.

- BA had written to Mr S, on 31 July 2017, giving him notice that it was terminating his employment. It had referenced the EG300 process and the reports from Dr Popplestone dated 20 April and 28 July 2017, in which he had expressed the view that Mr S was unlikely to return to flying within 24 months. This was later clarified by BAHS as meaning 24 months from the date on which Mr S' sickness absence started; that is, by April 2018. BA had, therefore, taken its decision to terminate Mr S' employment before he had been assessed by BAHS under Rule 14.
- The decision to terminate a contract of employment was a matter for the parties to that contract; namely BA and Mr S. BAHS was not a party to the contract of employment and it could not terminate a contract of employment itself. Its role was to determine whether Mr S satisfied the definition of Medical Incapacity in Rule 14(e). This could then trigger the termination of a contract of employment by the relevant employer. However, BA was not required to wait until BAHS had undertaken its assessment before terminating a contract of employment. The two processes were separate but could, in certain circumstances, be interlinked.
- In Mr S' case, the process for terminating his contract of employment had been started before any decision had been made by BAHS under Rule 14. Therefore, it could be argued that Rule 14(b) was not engaged. If that was the case, Rule 14(a) could still apply. The main question under either sub-rule was whether Mr S was, more likely than not, going to recover sufficiently to return to flying within the foreseeable future; that is, within two years of the cessation of his employment with BA. It was BAHS' role to come to an opinion on this.
- So far as their medical opinions were concerned, BAHS' doctors did not come within the Ombudsman's jurisdiction. They were answerable to their own professional bodies and the General Medical Council. However, the Ombudsman could consider the decision-making process undertaken by BAHS. This meant he could consider whether BAHS had reached a decision in a proper manner.
- BAHS began its decision-making process with Dr Caddis' assessment on 21 August 2017. He did not make a decision at that time, but sought further information from Dr Arkell. BAHS had previously said that Dr Caddis had requested "further specialist reports" before making a decision. It appeared Dr Arkell was the only specialist from whom a report was requested.
- Mr S had argued that Dr Caddis failed to ask Dr Arkell the right question; that is, he did not ask whether Dr Arkell was of the opinion that Mr S was likely to be able to return to flying within two years. Mr S argued that, if Dr Arkell had

been asked this question, he would have expressed the view that this was unlikely. Mr S had referred to his subsequent email exchange with Dr Arkell. Mr S also pointed out that Dr Caddis had not sought an opinion as to the likelihood of his return to flying within two years from Dr Chapman. He had referred to the opinion expressed by Dr Chapman in his email of 13 November 2017.

- Dr Caddis' letter to Dr Arkell had sought his view on whether Mr S was experiencing a trauma stress reaction or a mild form of PTSD and, if so, whether directed treatment would be indicated. He had mentioned EMDR. In his written response, Dr Arkell had discussed Mr S' current treatment and the wisdom of changing this when he was making progress. With regard to Dr Caddis' query concerning a trauma response, Dr Arkell had said Mr S felt this was academic if he was not flying. Dr Arkell did not, therefore, respond to Dr Caddis' question either in terms of diagnosis or treatment. The Adjudicator noted that Dr Caddis had referred to a telephone conversation with Dr Arkell. BAHS had not provided any record of this conversation, but it seemed unlikely that Dr Arkell would have expressed any different view to that which he had set out in his letter. Given his later correspondence with Mr S (see paragraph 50 below), it seemed unlikely that he would have been prepared to make a diagnosis of trauma stress reaction or PTSD without seeing Mr S.
- In his email to Mr S, Dr Arkell had said he thought Mr S had been making slow but steady progress with local therapy, having stepped back from aviation. With regard to a timescale for a return to flying, Dr Arkell had said this would need to be based on a detailed conversation with Mr S. He had said it appeared that Mr S still experienced intense distress when discussing a return to flying. He had suggested that, if this was the case, it was unlikely Mr S would be able to return to flying within two years. However, Dr Arkell had said this was a best guess by email and not a formal view on Mr S' prognosis.
- Dr Chapman had expressed a view as to the likelihood that Mr S would be able to return to flying within two years. He had said he was not confident that Mr S would return to flying. Dr Chapman also said that he thought it unlikely that it would be appropriate for Mr S to stop his medication in the near future.
- One of the specific obligations on decision-makers was to consider proper information. In particular, to consider all the relevant information which was available to them and ignore all irrelevant information.
- The question for the Ombudsman was, therefore, whether Dr Caddis had obtained sufficient proper information, whether he had considered all the relevant information and whether he had ignored anything irrelevant.
- Dr Caddis' report of 23 October 2017 indicated that he had assessed Mr S by reference to the guidance agreed with BA (see Appendix). He had referred to Mr S having a confirmed medical condition which prevented him from

undertaking his role. He had said there had been some improvement in Mr S' symptoms in the past six months and it was likely that improvement which permitted a return to work might occur within the next two years. Dr Caddis had said reasonable treatment remained to be explored, which might lead to an improvement in Mr S' condition such that he might return to his flying role. These comments aligned with the criteria set out in the guidance note.

- Mr S had made the point that the guidance could not override or amend the NAPS Rules and the Adjudicator agreed. The question was, therefore, whether the criteria set out in the guidance agreed with those set out in Rule 14.
- The purpose of the guidance agreed between BA and BAHS was to achieve consistency between decisions relating to Medical Incapacity. The Adjudicator said she could see nothing in the guidance which was at odds with the definition of Medical Incapacity set out in Rule 14(e). For the most part, the guidance simply reworded Rule 14(e). It did expand on the definition of Medical Incapacity where it referred to there being no significant improvement in the member's condition for at least six months. It also referred to there being no recognised investigation, treatment or other intervention likely to lead to improvement planned or available and no aggravating factors likely or able to be resolved. However, the latter would be factors which BAHS doctors might be expected to consider when assessing a member for the purposes of Rule 14. In the Adjudicator's view, the guidance did not attempt to amend Rule 14.
- The Adjudicator noted that, in its response to TPO, BAHS had referred to the 'no improvement over the preceding six months' factor as a "condition", which Dr Caddis did not feel was met. BAHS did need to exercise some caution in applying the guidance too rigidly in order to ensure it did not lose sight of the fact that it was only guidance. Its doctors must remain fully aware of the actual provisions in Rule 14.
- The evidence did not suggest that Dr Caddis took anything irrelevant into account in reaching his decision. But the question remained as to whether Dr Caddis took appropriate steps to obtain sufficient relevant information upon which to base his decision.
- Dr Caddis had expressed the view that it was likely that Mr S would see an improvement which would permit a return to work within the next two years. He also said reasonable treatment remained to be explored which might lead to an improvement in Mr S' condition such that he might return to gainful employment in his flying role. It was not clear, from his report, on what basis Dr Caddis had reached these conclusions. In the report, he did not specify what treatment he had in mind nor which condition he was referring to.
- At the time, Dr Arkell had diagnosed a generalised anxiety disorder for which Mr S was receiving medication and psychotherapy. Although, he had agreed with Dr Caddis that there was a possibility that Mr S was experiencing a

trauma stress reaction, this did not amount to a formal diagnosis; it was mere speculation. Nor did Dr Arkell comment on Dr Caddis' suggestion that EMDR might be indicated. In his subsequent correspondence with Mr S, Dr Caddis had said he thought there was a trauma element to Mr S' condition and that EMDR would be appropriate. The Adjudicator noted that BAHS now said that Dr Caddis felt that EMDR was an option and his notes suggested this was clinically indicated but Dr Arkell felt it was not practicable at that time. Given that Dr Caddis was not one of Mr S' treating physicians, it was surprising that he proceeded to a decision on the basis of a speculative diagnosis and treatment which had not been recommended, or even discussed, by Dr Arkell.

- The evidence did not, therefore, indicate that Dr Caddis had reached a decision in a proper manner. It was not supported by the available contemporaneous information.
- The Adjudicator noted also that Dr Caddis' opinion differed significantly from that provided by Dr Popplestone less than a month earlier. The only explanation BAHS appeared to have offered for this was that Dr Popplestone was assessing Mr S for the purposes of BA's absence management process and that the two-year timescale started from a different date. Given that the Medical Incapacity definition set out in the EG300 document was, to all intents and purposes, the same as that set out in Rule 14(e), the main reason for BAHS' doctors reaching such different view within such a short space of time must be the two-year start date. In other words, Dr Popplestone was assessing Mr S' chances of returning to flying before April 2018; whereas Dr Caddis was considering the period up to August 2019. This is a difference of some 16 months; in which time Mr S' condition was to improve sufficiently for him to return to flying. In the Adjudicator's view, BAHS could have been expected to provide a more detailed explanation for the apparent difference in opinions between its own doctors.
- Mr S' case was reviewed by Dr Emslie in December 2017. He had said the medical evidence confirmed that Mr S would become fit within the two-year timeframe. He did not specify which evidence he was referring to. Dr Emslie went on to say he had excluded EMDR as a reason to decline Mr S' pension because Dr Arkell had confirmed it was reasonable not to proceed with this. This appeared to contradict Dr Caddis' notes. Dr Emslie also said Dr Chapman's evidence confirmed an expectation of clinical improvement albeit this might take more than 12 months.
- It is not clear on what basis Dr Emslie had drawn this conclusion. Dr Chapman's view was that he would not suggest Mr S stop his antidepressants until he had been well for at least six months. He said this was unlikely to be in the near future and may well be over 12 months. It was not clear whether Dr Chapman was referring to the six-month period of wellness or the cessation of medication as occurring (or not) in the foreseeable future or after 12 months.



This would make quite a difference to Dr Chapman's evidence and no clarification had been sought from him. Potentially, Dr Chapman was saying he did not expect to be able to suggest Mr S cease his medication until some 18 months hence; that is, May 2019. This is much closer to the end of the two-year period in question. Dr Chapman had also said he was not confident that Mr S would return to flying. If this was the evidence to which Dr Emslie was referring, it could not be said to support his conclusion that Mr S would be fit to fly within two years.

- When asked to clarify his opinion, Dr Emslie had said there was evidence in terms of the diagnosis, response to treatment so far and expected prognosis to take a view that Mr S could become well enough to fly within the time-frame required. Again, he did not specify which evidence he was referring to or explain why he had apparently taken a far more optimistic view of Mr S' likely recovery than either Dr Arkell or Dr Chapman appeared to. On that basis, the evidence was insufficient to find that Dr Emslie had made his decision in a proper manner.
- The failure to make a decision in a proper manner amounted to maladministration on BAHS' part. Mr S had sustained injustice as a consequence because his eligibility for a pension under Rule 14 had yet to be correctly determined.
- The Adjudicator suggested that, in order to put matters right, BAHS should reconsider its decision as to whether Mr S did satisfy the definition of Medical Incapacity as set out in Rule 14(e). She suggested that, in order to do so, BAHS would require additional evidence from Drs Arkell and Chapman as to the state of Mr S' health as at 25 August 2017. In particular, it would require additional information about treatment options and their expected efficacy at that time within the context of the two-year timeframe in which a return to flying was required. In the absence of a formal diagnosis of trauma stress reaction or PTSD, BAHS should confine its consideration to Dr Arkell's diagnosis of generalised anxiety; unless Dr Arkell agreed the diagnosis should be amended.
- The Adjudicator also considered whether it would be appropriate for Mr S to receive a payment for non-financial injustice in line with the current guidance from the Ombudsman<sup>5</sup>. In her view, BAHS should pay Mr S £500 for significant non-financial injustice arising out of the failure to reach a decision in his case in a proper manner.

29. BAHS did not fully accept the Adjudicator's Opinion and Mr S raised some concerns about the next steps. Consequently, the complaint was passed to me to consider. I

agree with the Adjudicator's Opinion and I will therefore only respond to the main points made by Mr S and BAHS for completeness.

30. BAHS agreed to review its decision as to whether Mr S satisfied the definition of Medical Incapacity. However, it proposed to defer making any payment for non-financial injustice until after it had completed its review.
31. Mr S submitted that BAHS had already accepted that Dr Arkell and Dr Chapman disagreed with Dr Caddis' view. He suggested that, if it were to maintain its position, BAHS would be looking to the doctors to retrospectively change their opinions without consulting with him. Mr S considered the questions to be put to Dr Arkell and Dr Chapman to be critical and asked that BAHS be required to agree these with him beforehand.

### **Ombudsman's decision**

32. Essentially, Rule 14 requires BAHS to come to an opinion on whether Mr S was likely to return to flying within two years of the cessation of his employment with BA; that is, by August 2019. In coming to an opinion, BAHS is expected to consider Mr S' case in a proper manner. It is the manner in which BAHS considered Mr S' case which is the matter before me.
33. Briefly, in order to determine whether BAHS took the right approach in assessing whether Mr S satisfied the definition of Medical Incapacity, I need to consider whether it: (a) applied the Scheme Rules correctly; (b) obtained sufficient relevant evidence; and (c) came to a decision which is supported by the evidence.
34. The initial decision that Mr S did not satisfy the definition of Medical Incapacity under Rule 14 was made by Dr Caddis. The evidence indicates that Dr Caddis did understand what was required by Rule 14; inasmuch as he addressed the question of whether Mr S was likely to recover sufficiently to enable him to return to flying within two years of his employment ceasing. I note that Dr Caddis referred to there having been an improvement in Mr S' symptoms in the preceding six months, which is not found in the definition of Medical Incapacity; it is only found in the guidance agreed with BA. However, I do not find that this unduly influenced Dr Caddis' opinion. Rather, his opinion was based on his belief that reasonable treatment remained to be explored and that this was likely to lead to an improvement in Mr S' health such that he would be able to return to flying within two years.
35. Dr Caddis' opinion differed significantly from the opinions expressed by Mr S' own physicians; Dr Arkell and Dr Chapman. The difference of opinion between Dr Caddis and Dr Arkell is particularly concerning in view of the fact that Dr Arkell is a specialist in Mr S' condition. In such circumstances, I would have expected Dr Caddis to provide a clear explanation as to why his opinion differed from that of Dr Arkell. I am not persuaded that such an explanation can be found in Dr Caddis' report.

36. From his report, it appears that Dr Caddis had based his opinion on his view that Mr S was experiencing a trauma stress reaction or a mild form of PTSD. He had asked Dr Arkell whether “directed treatment” was indicated and mentioned EMDR. However, it is not clear, from his report, whether this was the treatment Dr Caddis had in mind when he referred to “reasonable treatment” remaining to be explored. In any event, while Dr Arkell agreed there was a possibility that Mr S was experiencing a trauma stress reaction, he did not confirm this as a diagnosis, or that EMDR would be appropriate. From his subsequent correspondence with Mr S, it appears unlikely that Dr Arkell would have been willing to do so without a further consultation with Mr S. I do not find that Dr Caddis’ opinion was supported by the evidence available to him from Dr Arkell.
37. Mr S’ case was subsequently referred to Dr Emslie on appeal. Dr Emslie provided even less explanation for his conclusion that the medical evidence confirmed that Mr S would become fit to fly within two years. In addition, he discounted EMDR on the basis that Dr Arkell had confirmed that it was reasonable not to proceed with this treatment option.
38. I find the reports prepared by Dr Caddis and Dr Emslie confusing and contradictory. BAHS, however, proceeded to a decision without asking them to clarify the reasoning behind the opinions they had expressed. The evidence does not support a finding that BAHS assessed Mr S’ case in a proper manner. This amounts to maladministration on BAHS’ part as a consequence of which Mr S sustained injustice. I uphold his complaint.
39. It is not my role to make a decision as to Mr S’ eligibility for a pension under Rule 14. That decision remains for BAHS to make. Where I find that a decision has not been made in a proper manner, the appropriate redress is for me to direct the decision-maker to re-take the decision. I note that BAHS accepted my Adjudicator’s opinion on this aspect of Mr S’ complaint and indicated that it is prepared to review his case. I have given directions below as to the approach it shall take and the timescales within which the review is to be undertaken.
40. I have also given some thought as to whether a payment for non-financial injustice is indicated, as suggested by my Adjudicator. I find that the lack of clear explanation will have caused Mr S significant distress and inconvenience at a time when he was already experiencing poor mental health. The approach taken by BAHS in assessing Mr S under Rule 14 will have unnecessarily added to an already stressful situation for him. I find that this warrants a payment for non-financial injustice. For the avoidance of any doubt, this is entirely separate to the redress which is afforded to Mr S by BAHS re-taking its decision under Rule 14 and is not dependent upon the outcome of that review.

## **Directions**

41. Within 28 days of the date of my Determination, BAHS shall take steps to obtain additional evidence from Dr Arkell and Dr Chapman regarding treatment options at the time Mr S' employment ceased and their expected efficacy within the context of the two-year timeframe in which a return to flying was required. In the absence of a formal diagnosis of trauma stress reaction or PTSD, BAHS shall confine its consideration to Dr Arkell's diagnosis of generalised anxiety; unless Dr Arkell agrees the diagnosis should be amended.
42. BAHS shall provide Mr S and BA with its reconsidered decision within 28 days of receipt of the additional evidence, setting out its reasons and the evidence it is relying upon. In the current circumstances, it will be necessary for the parties to be flexible on timescales; particularly when seeking information from the NHS. It is for this reason that the timescales I am directing apply to those parts of the process which BAHS is able to control.
43. Also within 28 days of the date of my Determination, BAHS shall pay Mr S £500 for significant non-financial injustice arising out of its failure to reach a decision in his case in a proper manner.

**Anthony Arter**

Pensions Ombudsman  
8 June 2020

## Appendix

### Medical evidence

44. Dr Popplestone, BAHS, 20 April 2017

Dr Popplestone said:

“... [Mr S] has clearly made progress since he first went off sick and he is now able to do a lot more outside work. Unfortunately I think he is still a long way from being able to fly (if at all) and I think it is very unlikely that he will be able to do so by the two dates you mention, i.e. the end of July and end of October 2017. There is nothing else therapeutically I can suggest nor any other support you could offer.”

45. Dr Popplestone, 28 July 2017

Dr Popplestone said:

“... unfortunately his situation remains little changed. I therefore do not think he will be fit to return to flying by either the 18 or 24 month point. I think the disability discrimination provisions of the Equality Act 2010 are likely to apply.”

46. Dr Caddis, BAHS, 21 August 2017

In a letter to Dr Arkell, Dr Caddis said he was assessing Mr S' eligibility for ill health retirement against the “BA Pension Trustees criteria”. He said he had met with Mr S and reviewed the medical information to date.

Dr Caddis said he understood Mr S had significant anxiety and had experienced extreme panic and anxiety on entering a BA building or looking at BA-related correspondence. He said Mr S appeared to be experiencing nightmares and flashbacks largely related to fictitious BA-related events. Dr Caddis said:

“What struck me most prominently was [Mr S'] physical reactions when telling me [of] these events and he did avert eye contact and appear to be in a state of heightened arousal. Given that he has had 6-9 months external counselling and he did not appear to form a useful or therapeutic bond with ... I wonder if we are actually dealing with a degree of trauma stress reaction or a mild form of PTSD. I wonder if the specific trigger of this is the most recent or past training incidents which may in part explain this somewhat extreme reaction ...

I was hoping you might review [Mr S] as to whether he meets any of these diagnostic criteria and whether any directed treatment would be indicated for this (for example EMDR) ...”

47. Dr Caddis asked for: “a short report outlining [Dr Arkell's] thoughts and prognostic indicators and time frames for any change were this [an] additional diagnosis”.

48. Dr Arkell, psychiatrist, 27 September 2017

In his letter to Dr Caddis, Dr Arkell agreed there was a possibility of trauma stress reaction rather than a simple generalised anxiety. He said he had also had an email exchange with Mr S. Dr Arkell said:

“[Mr S] explained that his contract with British Airways was terminated with effect from the 25<sup>th</sup> of August due to ill health. He continues to be engaged in psychotherapy locally ... on a regular basis and has made good progress towards increasing his self-esteem and general wellbeing. He remains on ... prescribed by his GP who will see him in six months to discuss whether he can possibly start reducing the dosage gradually.

He discussed having to return to London to see me, with ... and his GP, and both questioned whether it would be beneficial and may even be counter-productive to his progress.

Coming up to London and trying a different therapist risks being very unsettling. I agree with him on balance it would be unwise to push him into a different therapeutic process as he was settled into a trajectory of gradual recovery locally. I think he also feels at this point that the dilemma for him about whether there is a trauma response connected to flying is a bit academic if he is not flying.”

49. Dr Caddis, BAHS, 23 October 2017

Dr Caddis said Mr S had attended for ill health retirement assessment, on 21 August 2017, and he had now received a report from Mr S' treating specialist. He said Mr S had a confirmed medical condition which prevented him from undertaking his role. Dr Caddis said:

“There has been some improvement in his symptoms in the past six months and it is likely that improvement that permits a return to work may occur within the next two years.

In addition, reasonable treatment remains to be explored and may lead to an improvement in the condition that would permit a return to gainful employment in his flying role ...

In summary, [Mr S] does not meet the stated criteria for an award of an ill-health pension. I confirm that I have discussed this assessment with a BAHS colleague in accordance with our internal processes.”

50. Dr Arkell, 13 November 2017

In an email response to a request for an opinion from Mr S, Dr Arkell provided a copy of his letter to BAHS. He said he understood Mr S was not intending to return to flying. He said he thought Mr S had been making slow but steady progress with local therapy, having stepped back from aviation. Dr Arkell said any conjecture on

timescale for a return would need to be based on a detailed conversation with Mr S. He said, when they had last exchanged emails, it sounded as if Mr S still experienced intense distress when discussing a return. Dr Arkell said, if this remained the case, he thought it unlikely Mr S would be able to return within two years. He said this was a best guess by email and not a formal view on Mr S' prognosis

51. Dr Chapman, GP, 13 November 2017

In an email response to a request for an opinion from Mr S, Dr Chapman said there was no definitive answer to Mr S' question as to a return to flying. He said he would only consider stopping Mr S' antidepressants after he had been well for at least six months. Dr Chapman expressed the view that this was unlikely to be in the near future and may well be over 12 months. He said he was not confident that Mr S would return to flying.

52. Dr Caddis, 30 November 2017

Dr Caddis said he had reviewed the emails from Drs Arkell and Chapman with his colleagues. He said:

"I note Dr Arkell's guarded view of your return to flying, and any further treatment is dependent on your intention to resume flying. Your GP also comments that the medication is unlikely to be reviewed no sooner than 6 months and would likely be 12 months before this would occur. The medication referenced is actually permissible by the regulator for you to remain on while flying.

I understand you are not intending to return to flying, but the question being asked to BAHS by the pension fund trustee is whether there are reasonable treatment options available and would these impact favourably on a likely return to flying. The additional information you have sent ... does not significantly change my previous view on this ..."

53. Dr Emslie, Duradiamond, 12 December 2017

Dr Emslie said:

"Medical evidence confirms on balance that [Mr S] will become fit within reasonable time frame (2 years)."

"Exclude EMDR currently as a reason to decline pension (Psychiatrist confirms reasonable not to proceed).

GP evidence confirms that expectation of clinical improvement albeit it may take more than 12/12."

54. Dr Chapman, 28 December 2017

Mr S sent Dr Chapman details of Dr Emslie's opinion. In response, Dr Chapman said he had made it clear that his expectation was that Mr S would not return to flying. He

said it was clear to him that the very thought of a return to flying caused Mr S significant distress.

55. Dr Emslie, 2 January 2018

In a letter to Dr Caddis, Dr Emslie acknowledged receipt of Dr Chapman's further email. He said it reflected the opinion Dr Chapman had given earlier. Dr Emslie said:

"There is, however, evidence in terms of the diagnosis, his response to treatment so far, and expected prognosis, in my view, within the file, to take a view that he could well become capable on the balance of probabilities, as being well enough to fly within the time-frame required to assess eligibility for ill health retirement."

56. Dr Chapman, 30 April 2018

In a letter to BAPSL, Dr Chapman said he had last seen Mr S on 23 March 2018 and he was still feeling very anxious and low in mood. He said Mr S was attending counselling on a monthly basis and might increase the frequency.

Dr Chapman expressed the opinion that Mr S was not going to be fit enough to return to flying and, because he had remained unwell for as long as he had, the prognosis was rather poor.

**Eligibility for Award of An Ill-Health Pension (NAPS) Guidance to BAHS**

57. BAHS provided a copy of the guidance note prepared in agreement with BA. This states:

"The following criteria will be used to determine whether the requirements of 'Medical Incapacity' are met:

The individual must have a recognised medical condition ... that has resulted in incapacity or disability affecting ability to work.

The individual should be unlikely to recover from the medical condition in the foreseeable future. British Airways and the NAPS Trustees have agreed that, for the purposes of the Scheme, 'Foreseeable future' should be defined as a period of 2 years.

There should be no significant improvement in the condition for at least 6 months.

No recognised investigation, treatment or other intervention likely to lead to improvement should be planned or available...

There should be no evidence or aggravating factors likely or able to be resolved (this would include factors which would be likely to resolve following termination)



### **Process**

All decisions will be made by an Occupational Physician (OP), reviewed by a Consultant OP, and recorded on the employee's occupational health record. The occupational health record should include a statement explaining the rationale for the outcome of the assessment.

BAHS will arrange for all cases deemed ineligible for award of an ill-health pension to be reviewed by an external occupational health specialist, subject to consent by the employee for release of relevant documentation, including medical information..."

### **British Airways Absence Management Policy EG300 September 2013**

58. Section 4.7 provides for the termination of employment on the grounds of medical incapacity. This provides that a person's employment will be terminated on the grounds of medical incapacity if:-

- (i) reasonable adjustments cannot be made to the employee's current working environment;
- (ii) the employee is incapable of undertaking a suitable alternative job or no suitable alternative is available within a reasonable period of time; and
- (iii) where applicable, an application for income protection benefit has been unsuccessful.

### **British Airways Pilot Officers Loss of Licence Scheme (1992) Guide**

59. This scheme provides a temporary monthly benefit in the event that a pilot's certificate and licence are temporarily suspended due to physical injury or illness. It provides a lump sum when a pilot loses her/his medical certificate and licence: (a) if, "in the judgement of the company's principal medical advisor", the certificate and licence is unlikely to be restored "in the foreseeable future"; and (b) her/his employment is terminated "on the grounds of medical incapacity". The Guide states that: "the medical requirements for termination of contract on the grounds of medical incapacity can only be authorised by one of the named doctors representing the Company's medical advisor".