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Report on the BALPA rally and update on BALPA's next steps

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By Dave Smith BACC Chairman

It is now two weeks since the BALPA Rally and March but it is worth reflecting on the significance of the event that took place on that day before I update you on the legal position and BALPA's next steps.

On Saturday March 15th almost 1200 pilots and their families attended the BALPA Rally and March. This event, as some of you will have realised, was planned to coincide with the first date of strike action. Once it became clear the legal processes would delay industrial action a decision was taken to continue with the event but to modify its emphasis to one of family support and solidarity.

British Airways cannot have failed to notice the event on that Saturday despite the deafening silence from them since. There was television coverage and significant interest from the local and national press. We brought the campaign to a wider public audience which will help our ongoing activities to achieve a successful outcome and we know this has been achieved from the hit rate on the campaign website www.baplane-bapilot.org.

Most important though was the sense of unity that all members and their families felt when they took part in the march to Waterside. It is this sense of unity which will bind us together over the following weeks and which will not allow the Company to divide and rule us.

There is a podcast of the speech which I gave to the rally on the campaign website but for those who do not wish to download the file I would like to highlight the following which was touched on in my speech and which will help you understand why BALPA has no choice but to pursue the matter to the High Court.

As you are aware, after the resounding ballot result, the BACC tried one final attempt to reach a negotiated settlement before having to call for strike action. Something we were only ever going to do as a last resort.

We engaged the services of ACAS for the negotiations and I and some of my Head Office Team spent a week in talks trying to find an acceptable solution. We were mindful of the clock which was ticking in relation to our legal obligation to give at least 7 days notice of any strike and to commence it within 28 days of the ballot result. The final day to serve notice was, therefore, Tuesday 11th March, so on Friday the 7th March we had to make a judgment as to whether we were likely to achieve an acceptable outcome through the ACAS negotiations or not.

By the end of the talks on that Friday it was clear to us the deal, as proposed by BA, was not acceptable and they were adamant they would not move on two fundamental points. We informed BA of our position and that if it was not prepared to move we would have no option but to serve notice of strike action.

It was at this point that BA gave us a summary of a legal case based on Article 43 of the Treaty of Rome which they asserted would allow them to claim unlimited damages from BALPA if we served such a notice.

Trade Unions, when calling on members to take industrial action, have immunity from claims for damages providing they comply with the laws governing ballots and strikes. This is a fundamental requirement of any free society in which Trade Unions exist, otherwise they could never call for industrial action without the fear of an employer taking them to court and bankrupting them. BALPA obviously took legal advice to ensure our ballot was lawful and BA has not sought to challenge it. In fact they encouraged everyone to vote. They just do not like the outcome of the ballot and are simply seeking to frustrate your right to take industrial action by whatever means possible.

They are seeking to use a piece of EU legislation (Article 43), which is designed to prevent anti-competitive behaviour, in a way in which it was never intended. Essentially, Article 43 gives any company in the EU the right to start a business anywhere else in the EU and if someone or some organisation tries to restrict the setting up of that business they may fall foul of Article 43. However, even if Article 43 is found to apply the Court will have to decide whether what we are proposing is both legitimate and proportionate. If it is then we can still take action.

BA threatened that if we served notice of strike they would seek damages because we would be restricting their right to start up OpenSkies by making it too costly.

Article 43 has been used this way before, in the Viking case, but the judgment which came out of the European Courts of Justice only dealt with whether Article 43 applied. The question as to whether what the union was calling for was legitimate and proportionate was referred back to the UK Court of Appeal and was not determined because the parties arrived at an 'Out of Court Settlement'. We, therefore, decided to take the initiative and applied to the Court to secure a judgment that Article 43 does not apply or should it rule that it does, that our strike action can still proceed because it is legitimate and proportionate. Before we could do that though we had to stop the clock on the 21 day (28-7) notice period.

In order to achieve this BALPA's legal team went before a judge in the High Court on Monday 10th March where we gave an undertaking not to take strike action while the issue of Article 43 was before the courts. In return for giving this undertaking the judge 'stopped the clock' which meant our right to give notice of strike action was protected. This was described by the TUC as "a smart move" and one which they did not think had been used by a Trade Union before.

We are now in the process of seeking a speedy resolution to this matter. Speedy in legal terms means between 4 to 8 weeks instead of 1 to 2 years. There is nothing of course to stop us re-entering negotiations with BA during this period should they indicate their willingness to move from the position they took at the end of the ACAS talks.

During my speech I also explained why BALPA decided to call the Rally and March.

From the very beginning BA has ignored their loyal employees who want to make OS a success and who want to be part of it. They refused to talk to the BACC for months and then only agreed to enter negotiations when threatened with a ballot. Throughout the negotiations they have said they do not really want BA pilots anywhere near the OS operation and when we had the

temerity to object they came up with all sorts of spurious excuses as to why OS had to employ its own pilots including cultural differences.

But despite all the spin the Company put out you saw through it and gave the BACC an overwhelming mandate for strike action and now BA is trying to deny you your right, enshrined in law, to withdraw your labour, by using a piece of EU legislation.

Throughout, the Company has behaved like a 19th century mill owner. At no time did they come to BALPA in a partnership way and ask how we could work together to make OS a success. It was only ever "This is the way it will be", "Do not dare to challenge us" and "We run this company"; oh and lets not forget "If you try to take any sort of action we will bankrupt your union and destroy your ability to enforce your agreements forever".

That is why we asked you all to show publicly your outrage at the way our managers and so called Leadership Team are behaving. BA pilots have never publicly demonstrated before, and it sends a very powerful message to the public, the Board, the Leadership Team and everyone in BA that its pilots will not simply bend the knee to the bullying tactics of their employer.

So what is the current situation in respect of OpenSkies and the legal case? The following are the processes which our legal team need to complete in preparation for the High Court Trial.

- Particulars of claim to be served. This was done on 18 March;
- Defence and counterclaim to be served on or before 31 March
- Defence to counterclaim (if so advised) 4 April;
- Disclosure of documents by list on 11 April;
- Inspection of documents on 14 April;
- Mutual exchange of witness statements on 28 April;
- Mutual exchange of supplementary witness statements (if so advised) on 2 May;
- Service of Claimant skeleton 4 days before trial;
- Service of Defendant skeleton 3 days before trial;
- Matter to be listed for 5 days on first available date after 14 May;

- The trial of the action to be fixed upon application to the Clerk of the Lists on the 1st April.

You will be as keen as we are to see events come to a conclusion but you will see from the above timetable that although the question of the legality of our strike action is going through the 'fast track' process there is unlikely to be a judgment before June this year. However, please remember the first OpenSkies service will not take place until June and the second aircraft is not due to enter service until October – any settlement which we eventually come to with BA will have to encompass these as well as future aircraft.

The Campaign communications may now seem to reduce to a trickle from the torrent of information you received during the early part of it, when we needed to share so much information with you to ensure your vote in the ballot was an informed one. Do not assume that because of the reduction in information being sent to you the importance of the issue is being allowed to fade however. That is what the Company is trying to achieve. They hope 'out of sight', will become, 'out of mind' but as it is clear that the vast majority of you now share BALPA's fears for our job security and terms and conditions, I know this will not happen.

If at the end of the legal processes BA has not changed its position and the Courts rule in our favour, then strike action will be the only recourse left to BALPA. In order to ensure there is absolutely no possibility of BA mounting a further challenge on the grounds that your views have changed with the passage of time, the BACC has taken the decision to re-ballot as soon as the legal proceedings are over. As all the arguments and information is already known to members this ballot will be conducted over the minimum timescales required by the law and the BACC is confident you will return an even higher mandate for strike action than you did before.

For the moment however, the BACC asks you to contain your frustration and strength of feeling and remain resolute for however long it takes to resolve this dispute.