

**UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF NEW YORK**

*Dover, et al. v. British Airways, PLC (UK), No. 12-cv-05567 (RJD)(CLP)*

**If you have redeemed British Airways Plc’s frequent flyer miles for an award ticket and paid a fuel surcharge, you may be eligible for benefits from a class action settlement.**

*A federal court authorized this Class Notice. This is not a solicitation from a lawyer.  
You are not being sued.*

Para una notificación en Español, llamar 1-833-261-2496

- A Settlement has been reached in a class action lawsuit. In the lawsuit, Plaintiffs alleged that British Airways Plc (“BA”) breached its contract (the “EC Contract”) with members (“Settlement Class Members”) of its frequent flyer program (the “Executive Club”) because its fuel surcharges charged on reward flights were not reasonably related to the price or cost of fuel. BA maintains that the EC Contract permitted it to charge a fuel surcharge, denies that its fuel surcharges were not reasonably related to the price or cost of fuel, denies that it breached the EC Contract, and denies that it did anything wrong.
- The United States District Court for the Eastern District of New York (the “Court”), which is overseeing this lawsuit (the “Litigation”), has not decided who is right. Instead, the parties agreed to a compromise. Defined terms (with initial capitals) used herein and not otherwise defined have the same meaning as set forth in the Settlement Agreement.
- BA’s current airline fares, taxes, and fees are not implicated by the allegations in the Litigation and not at issue in the Litigation.
- The Settlement only impacts you if you are a Settlement Class Member. A Settlement Class Member is a United States resident Executive Club member who redeemed frequent flyer miles (“Avios”) for an award ticket from November 9, 2006 through April 17, 2013 (the “Class Period”), who paid a BA-imposed fuel surcharge, and who provided BA with a valid United States address at the time of booking.
- The Settlement Class excludes: (1) Executive Club members who redeemed frequent flyer miles exclusively using BA’s “Cash + Avios” option; (2) any judge to whom this case is assigned, along with his or her staff; (3) BA’s officers, directors, employees, as well as outside counsel in the Litigation, and (4) immediate family of any individual excluded by 2 or 3.
- Settlement Class Members consist of two categories of individuals: (1) Settlement Class Members whose Executive Club account with BA remains open (“Active Executive Club Members”); and (2) Settlement Class Members whose Executive Club account with BA has been deleted or closed (“Former Executive Club Members”).

- Under the Settlement, BA is automatically providing up to 2,228,677,500 Avios to Active Executive Club Members and providing both Active Executive Club Members and Former Executive Club Members the ability to elect a Cash Option. If you are an Active Executive Club Member, you will *automatically* receive between 12,500 and 35,000 Avios (depending on how many times you redeemed Avios during the Class Period as set forth below) unless you choose a cash payment (“the Cash Option”).
- If you choose the Cash Option, you will receive a payment of 16.9 percent of the total fuel surcharges you paid for all award tickets you purchased during the Class Period, which equates to an aggregate payment of \$27,125,000 if all Settlement Class Members choose the Cash Option. The 16.9% number assumes the Court awards all of Class Counsel’s motion for attorneys’ fees and expenses. If the Court reduces fees or expenses, Class Members who submitted a valid Cash Option claim will also receive a pro rata share of any unawarded portion of Class Counsel’s attorneys’ fees and expenses.
- If you are a Former Executive Club Member, you may elect the Cash Option on the same terms as Active Executive Club Members. To obtain payment you must submit a Cash Claim Form.
- To see the exact amount of your Cash Option, visit [www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com).
- Whether you act or not, your legal rights as a Settlement Class Member are affected by the Settlement. Your rights and options—and the deadlines to exercise them—are explained in this Class Notice. Please read this Class Notice carefully in its entirety.

**SETTLEMENT CLASS MEMBERS' LEGAL RIGHTS AND  
OPTIONS IN THE SETTLEMENT:**

<b>YOUR RIGHTS AND OPTIONS</b>	<b>WHAT THEY MEAN</b>	<b>DEADLINES</b>
<b>DO NOTHING &amp; OBTAIN AVIOS IF YOU ARE AN ACTIVE EXECUTIVE CLUB MEMBER</b>	You are not required to take any action to receive the Avios benefits of the Settlement (receiving between 12,500-35,000 Avios depending on the number of redemptions you had during the Class Period) if you are an Active Executive Club Member. If the Settlement is finally approved, you will be bound by the Court's Final Judgment and the release of claims explained in the Settlement Agreement.	None
<b>DO NOTHING AND RECEIVE NOTHING IF YOU ARE A FORMER EXECUTIVE CLUB MEMBER</b>	If you are a Former Executive Club Member and do not take any action, you will not receive anything under the Settlement. However, if the Settlement is finally approved, you will be bound by the Court's Final Judgment and the release of claims explained in the Settlement Agreement.	
<b>SELECT THE CASH OPTION</b>	You must submit a completed Cash Claim Form to select the Cash Option. The minimum possible Cash Option payment is \$5. You can use your class member identifier to access the amount of the Cash Option you would be eligible to receive if you file a Valid Claim at <a href="http://www.fuelsurchargeclassaction.com">www.fuelsurchargeclassaction.com</a> . To find out how to select the Cash Option, please read Question 10.	Received on or before July 29, 2018
<b>OBJECT OR COMMENT</b>	Write to the Court about why you do or do not like the Settlement. To find out how to object or comment, please read Question 14.	Filed & served on or before July 6, 2018
<b>EXCLUDE YOURSELF (OPT OUT)</b>	Get no benefits from the Settlement. Requesting exclusion from the Settlement (also called "opting out") would allow you to file or continue your own lawsuit against BA about the legal claims involved in the Settlement, individually. To find out how to opt out, please read Question 12.	Received on or before July 6, 2018
<b>GO TO A FINAL APPROVAL HEARING</b>	Whichever of the above options you choose, you may also ask to speak in Court about the Settlement. To find out how to do so, please read Question 14.	Filed & served on or before July 6, 2018

**WHAT THIS CLASS NOTICE CONTAINS**

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## **BASIC INFORMATION**

### **1. WHY DID YOU RECEIVE THIS NOTICE?**

This notice (“Class Notice”) has been sent because the Court has given its preliminary approval to the Settlement of the Litigation.

If you received an e-mail or a postcard concerning the Settlement, that means that BA’s records indicate you may be a Settlement Class Member who is affected by the Settlement.

### **2. WHAT IS THE CASE ABOUT?**

Plaintiffs filed a lawsuit in which they alleged that BA charged fuel surcharges to Settlement Class Members on frequent flyer reward flights that breached the EC Contract. BA denies that it did anything wrong, believes that the EC Contract permitted it to impose a fuel surcharge, and that the fuel surcharges that it imposed on Settlement Class Members were appropriate under the EC Contract. Accordingly, BA has vigorously defended Plaintiffs’ allegations. The Parties, however, have agreed to settle the Litigation to avoid the cost, delay, and uncertainty of continuing the Litigation.

### **3. WHY IS THIS A CLASS ACTION?**

In a class action, one or more “Class Representatives” or “Named Plaintiffs” sue on behalf of all those with the same types of claims arising from the same events. Here, the Class Representatives filed the Litigation as a proposed class action and asked to represent a class of individuals who paid fuel surcharges on frequent flyer reward flights. They sue on behalf of people who have similar claims—called the “Settlement Class” or “Settlement Class Members”—which in this case may include you.

Before the parties reached the Settlement, the Court decided this case could proceed as a class action because the Court found that it met the requirements of Federal Rule of Civil Procedure 23, which governs class actions in federal court. While BA disputes that a class is appropriate for trial purposes, the Parties have agreed to the certification of the Settlement Class, as defined below, for purposes of the Settlement.

### **4. WHY IS THERE A SETTLEMENT?**

The Court has not decided which side is right or wrong in the Litigation. Instead, both sides agreed to a settlement to avoid the costs and risks of a lengthy trial and appeals process.

The Court conducted a settlement conference with the Parties. This is a formal way people get together to see if they can resolve disputes with the help of the Court. On two separate occasions in January 2018, the Magistrate Judge assigned to this case conducted lengthy negotiation sessions with the Parties. These sessions with the Court occurred after two failed attempts to mediate the dispute with private mediators over the preceding two years.

After extensive, arm’s-length negotiations, overseen by the Magistrate Judge assigned to the Litigation, the lawyers representing the Parties agreed to settle the Litigation to avoid the cost, delay, and risk of continuing the Litigation. The Class Representatives and their lawyers think the Settlement is fair, reasonable, adequate, and in the best interests of all Settlement Class Members.

## **WHO DOES THE SETTLEMENT APPLY TO?**

### **5. WHO IS IN THE SETTLEMENT CLASS**

The Settlement Class under the Settlement includes: all United States resident Executive Club members who redeemed Avios for an award ticket during the Class Period and who paid a BA-imposed fuel surcharge, so long as that United States resident Executive Club member provided BA with a valid United States address at the time of booking.

### **6. ARE THERE EXCEPTION TO BEING INCLUDED IN THE SETTLEMENT CLASS?**

The Settlement Class under the Settlement excludes: (1) Executive Club members who redeemed frequent flyer miles exclusively using BA's "Cash + Avios" option; (2) any judge to whom the Litigation is assigned, along with his or her staff; (3) BA's officers, directors, employees, as well as outside counsel in the Litigation, and (4) immediate family of any individual excluded by 2 or 3.

### **7. I'M STILL NOT SURE IF I AM INCLUDED.**

If you are still not sure whether you are included in the Settlement Class, you can call toll-free 1-833-261-2496 or visit [www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com) for more information.

## **THE SETTLEMENT BENEFITS AND OPTIONS**

If the Settlement is approved and becomes final, it will provide the benefits described below to Settlement Class Members.

### **8. WHAT ARE THE BENEFITS OF THE SETTLEMENT FOR ACTIVE EXECUTIVE CLUB MEMBERS?**

Under the Settlement, BA has agreed to automatically place Avios into the accounts of Active Executive Club Members. In particular, each Active Executive Club Member who redeemed Avios for an award ticket and who paid a BA-imposed fuel surcharge will have Avios automatically placed into his or her Executive Club account, unless he or she chooses the Cash Option, described below. Active Executive Club Members will receive the following Avios based on the number of times they redeemed Avios for award tickets during the Class Period:

- 12,500 Avios: for one redemption during the Class Period for which they paid a fuel surcharge;
- 20,000 Avios: for between two and five redemptions during the Class Period for which they paid a fuel surcharge; or
- 35,000 Avios: for six or more redemptions during the Class Period for which they paid a fuel surcharge.

The total number of Avios that will be placed into the Executive Club accounts of Active Executive Club Members in the aggregate may be up to 2,228,677,500 Avios, depending upon how many Active Executive Club Members elect the Cash Option.

Active Executive Club Members will not pay any money to receive these Avios. Avios will be electronically placed into Active Executive Club Members' Executive Club accounts within thirty days after the Effective Date, as set forth below.

Active Executive Club Members may file a claim for the "Cash Option," which is a payment of 16.9 percent of their total fuel surcharges paid for all award tickets purchased during the Class Period.

Cash Option payments will be mailed thirty days after the Effective Date, as set forth below. Active Executive Club Members that elect the Cash Option will relinquish any claim they have under the Settlement Agreement to receive any Avios deposited in their Executive Club accounts at no charge.

**9. WHAT ARE THE BENEFITS OF THE SETTLEMENT FOR FORMER EXECUTIVE CLUB MEMBERS?**

Each Former Executive Club Member may choose the Cash Option, which is a payment of 16.9 percent of his or her total fuel surcharge paid for all award tickets purchased during the Class Period. To elect the Cash Option, you must obtain and submit a Cash Claim Form by following the directions set forth at [www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com), as set forth in the next section of this Class Notice.

**To receive the Cash Option you must submit your Cash Claim Form by the Claims Deadline—no later than July 29, 2018.**

Cash Option payments will be mailed thirty days after the Effective Date, as set forth below.

**10. WHAT DO I NEED TO DO TO PARTICIPATE IN THE SETTLEMENT?**

If you are an Active Executive Club Member and you would like to receive Avios, you do not need to do anything. BA automatically will place the Avios into your electronic Executive Club account as long as you do not opt out of the Settlement or elect the Cash Option.

If you are an Active Executive Club Member and would like to receive the Cash Option instead of Avios, you must obtain and submit a Cash Claim Form by following the directions set forth at [www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com).

If you are a Former Executive Club Member and would like to receive the Cash Option, you must also obtain and submit a Cash Claim Form by following the directions set forth at [www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com). Former Executive Club Members who fail to submit a valid Cash Claim Form will not receive any compensation from the Settlement.

**To receive the Cash Option you must submit your Cash Claim Form by the Claims Deadline—no later than July 29, 2018.**

## **11. WHEN WILL THE SETTLEMENT GO INTO EFFECT?**

The Court will hold a Final Approval Hearing on July 27, 2018 to decide whether to approve the Settlement. Even if the Court approves the Settlement, there could be appeals. The time for an appeal varies, and could take more than a year.

The Effective Date is the date when all appeals are completed, and the Settlement becomes final. You can visit the Settlement Website at [www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com) after July 27, 2018, to check on the progress of the Court-approval process and the Effective Date. Please be patient.

Avios deposits and Cash Option checks will be issued no more than 30 days after the Effective Date. The Court will have the power to enforce the terms of the Settlement Agreement.

## **EXCLUDING YOURSELF FROM THE SETTLEMENT CLASS**

If you do not want to participate in the Settlement and instead you want to keep all of your rights to sue BA individually about the Claims being resolved in the Settlement, then you must take steps to get out of the Settlement Class. This is called asking to be excluded from, or sometimes called “opting out” of, the Settlement Class.

## **12. IF I DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, WHAT MUST I DO?**

To exclude yourself from the Settlement, you must send a signed statement to JND Legal Administration that includes your name, address, and telephone number stating that you wish to exclude yourself from the case. Your written request should be mailed to:

BA Fuel Surcharge Class Action  
c/o JND Legal Administration  
PO Box 91306  
Seattle, WA 98111

Your written request must be **received** by **July 6, 2018**. If your request is not received by that date, your right to opt out will be waived and you will be bound by all orders and judgments entered in connection with the Settlement.

## **13. IF I EXCLUDE MYSELF, CAN I GET ANYTHING FROM THE SETTLEMENT?**

If you choose to exclude yourself from the Settlement Class: (1) you will not be entitled to receive the benefits of the Settlement; (2) you will not be legally bound by the Settlement Agreement; and (3) you will keep any rights you may have to sue BA individually for the legal claims included in the Settlement Agreement, as long as suit is filed before the relevant statute of limitation expires.



## **OBJECTING TO THE SETTLEMENT OR THE REQUEST FOR ATTORNEYS' FEES**

### **14. HOW DO I TELL THE COURT IF I DO NOT LIKE THE SETTLEMENT OR THE ATTORNEYS' FEES REQUEST?**

If you are a Settlement Class Member, you can object to the Settlement if you do not like any part of it. You can also object to Class Counsel's request for attorneys' fees and expenses. You can give reasons why you think the Court should not approve the Settlement or award the requested fees or expenses. The Court will consider your views.

Anyone who objects to the Settlement, the Settlement Agreement, the application for attorneys' fees, expenses, or service awards for the Class Representatives, or the other matters to be considered at the Final Approval Hearing may appear and present such objections. To be permitted to do so, however, you must, on or before July 6, 2018, file with the Court and serve on Class Counsel, BA's counsel and the Settlement Claims Administrator your written objection and must include the following information:

- Your name, address, telephone number and, if represented by counsel, the name, address, and telephone number of your counsel;
- A statement whether you intend to appear at the Final Approval Hearing, either in person or through counsel;
- All grounds for your objection, accompanied by any legal support for the objection known by you or your counsel;
- Copies of any papers, briefs, or other documents upon which the objection is based or upon which you or your counsel intend to rely;
- A statement of whether you or your lawyer will ask to appear at the Final Approval Hearing to talk about the objections and, if so, the amount of time you or your counsel request; and
- Your handwritten signature.

If you intend to have a lawyer present, your lawyer must enter a written notice of appearance of counsel with the Clerk of Court no later than July 6, 2018. You must sign your own objection. Attorneys' signatures on objections will not be accepted.

**If you do not comply with the foregoing procedures and deadlines for submitting written objections and/or any intention to appear at the Final Approval Hearing, you may lose substantial legal rights to contest the orders or judgments of the Court entered in connection with the Settlement.**

## THE LAWYERS REPRESENTING YOU

### **15. DO I HAVE A LAWYER IN THIS CASE?**

The Court has appointed David S. Stellings, Nicholas Diamand, Jason L. Lichtman, and Douglas I. Cuthbertson of Lief Cabraser Heimann & Bernstein, LLP as Class Counsel to represent the Settlement Class Members. The only fees and expenses these lawyers will seek are those described in Question 16 below. If you want to be represented by your own lawyer in this case, you may hire one at your own expense.

### **16. HOW WILL THE LAWYERS BE PAID?**

For more than five years, Class Counsel have worked without compensation on this case. During that time, they spent thousands of hours and more than \$3.5 million of their own money advancing the litigation. If the case had not settled or if it turned out to be unsuccessful, Class Counsel would have lost their entire investment in the case. In connection with the Final Approval Hearing on the Settlement, Class Counsel will apply to the Court for an award of expenses and attorneys' fees, with the total amount not to exceed \$3,750,000 in expenses and \$11,095,000 in fees, which is approximately equal to twenty-eight (28) percent of the \$42,000,000 total settlement compensation after deduction of expenses.

In the event the Court declines to approve, in whole or in part, the payment of attorneys' fees, and expenses in the amounts requested by Class Counsel, the amount not awarded will be distributed, on a pro rata basis, to Settlement Class Members who submitted valid Cash Claim Forms by the Claims Deadline.

Class Counsel will also apply to the Court for service awards for each of the three Class Representatives in an amount not to exceed \$10,000 each. These service awards compensate the Class Representatives for their efforts and commitment on behalf of the Settlement Class during the Litigation, including sitting for depositions, producing documents, submitting testimony to the Court, and communicating with Class Counsel on behalf of Class Members.

## THE COURT'S FINAL APPROVAL HEARING

### **17. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?**

The Court will hold a Final Approval Hearing to decide whether to approve the Settlement and whether to grant Class Counsel's motion for attorneys' fees and expenses. You may attend and you may ask to speak, but you do not have to do either one.

The Final Approval Hearing will be held before the Honorable Cheryl L. Pollak on **July 27, 2018, at 10 A.M. Eastern Time in Courtroom 13B South, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, New York, NY 11201.**

**Do not write or call the judge or the clerk concerning this Class Notice or the Litigation.**

The purpose of the Final Approval Hearing will be for the Court to determine whether the Settlement should be finally approved as fair, reasonable, and adequate, and in the best interests of the Settlement Class, and to consider awarding attorneys' fees and expenses to Class Counsel, as well as service awards to the Class Representatives. At that hearing, the Court will hear any objections and arguments concerning the fairness of the Settlement or the fees that have properly been submitted, as set forth above.

The Final Approval Hearing may be postponed or changed to a different date, time, or location without notice. You should check the website, [www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com), periodically to check on the date of the Final Approval Hearing, the Court-approval process, and the Effective Date.

#### **18. DO I HAVE TO COME TO THE FINAL APPROVAL HEARING?**

No, you are not required to come to the Final Approval Hearing. Class Counsel will answer any questions the Court may have.

If you want to have a lawyer appear on your individual behalf at the Final Approval Hearing, your lawyer must enter a written notice of appearance with the Clerk of the Court no later than July 6, 2018 and must comply with all of the requirements explained in response to Question 14 of this Class Notice.

If you send an objection, you do not have to come to Court to talk about it. As long as you filed your written objection on time and complied with the other requirements for a proper objection, the Court will consider it.

#### **19. MAY I SPEAK AT THE FINAL APPROVAL HEARING?**

You or your lawyer may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must tell the Court in your objection letter that you or your lawyer would like to speak at the hearing. You must also comply with all of the requirements explained in response to Question 14 of this Class Notice.

**You cannot speak at the hearing if you do not comply with this procedure.**

#### **IF YOU DO NOTHING**

#### **20. WHAT HAPPENS IF I DO NOTHING?**

If you are an Active Executive Club Member and you do not choose the Cash Option, you will receive Avios automatically into your electronic Executive Club account as long as you do not opt out of the Settlement. If you are a Former Executive Club Member, you must file a Cash Claim Form by the Claims Deadline, July 29, 2018, as described in response to Question 10, to receive any Settlement benefits, because BA cannot automatically give you Avios.

**IF YOU DO NOTHING AND THE SETTLEMENT IS FINALLY APPROVED, YOU WILL BE BOUND BY THE COURT'S FINAL JUDGMENT AND RELEASE OF CLAIMS EXPLAINED IN THE SETTLEMENT AGREEMENT.**

**GETTING MORE INFORMATION**

**21. HOW DO I GET MORE INFORMATION?**

This Class Notice is only a summary of the terms of the Settlement. More details about the Settlement, the Effective Date, the deadlines, and your options are available in a longer document called the Settlement Agreement. This Settlement Agreement can be reviewed by clicking here: **[www.fuelsurchargeclassaction.com](http://www.fuelsurchargeclassaction.com)**.

The Settlement Website also contains answers to common questions about the Settlement, plus other information to help you determine whether you are a Settlement Class Member. In addition, some of the key documents in the case will be posted on the Settlement Website. If you would like this Class Notice or the Settlement Agreement mailed to you, please call 1-833-261-2496 or write to JND Legal Administration at:

BA Fuel Surcharge Class Action  
c/o JND Legal Administration  
PO Box 91306  
Seattle, WA 98111

Alternatively, all of the court documents in this case are on file and available for review during regular office hours at the Clerk of the Court, United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201.

**PLEASE DO NOT CALL BA, THE COURT OR THE OFFICE OF THE CLERK.**