



August 2021

## Merchant Navy Ratings Pension Fund Proposed settlement of the High Court case about ill-health early retirement benefits

**This letter is for information only. You do not need to reply. If you think you are affected, then keep your records safe**

**If you have changed address it's important that you let the Trustee know**

### **1 Introduction**

This is an important letter to you from the Trustee of the Merchant Navy Ratings Pension Fund ("**Fund**"). It is being sent by post to:

- all persons who receive a pension from the Fund (members or their relevant survivors); and
- all persons who have left pensionable service with an entitlement to benefits from the Fund but have not yet retired on a pension.

As you are aware from previous communications, a trial was due to be heard in the High Court in November 2020. This related to the ill-health early retirement ("**IHER**") benefits paid by the Fund and was to decide whether certain members had been underpaid.

As previously explained, as a result of confidential settlement discussions between the parties to the case, the Judge agreed to adjourn the trial and put the case on hold. This was to allow the parties the necessary time to prepare and agree detailed settlement terms in this complicated matter.

The Trustee is pleased to report that the parties have now agreed those detailed settlement terms. However, they remain subject to Court approval as explained below.

### **2 Purpose of this letter and next steps**

This letter, together with the enclosed Summary, gives details of the Court hearing at which the proposed settlement will be considered. It also explains what will happen if the Court approves the settlement.

The proposed settlement will be considered for approval by a Judge at a hearing over two days from (or shortly after) 11 October 2021.

The Judge will only approve the settlement if they consider that it is in the interests of the members and employers to do so.

### **3 Keeping Records**

**The key thing that you need to do now, if you are not in receipt of an IHER pension but you think you might be affected, is keep safe any relevant records that you have – see section 10: Your records below.**

In summary, the Trustee strongly recommends that, where possible, if you were in service on 8 October 1993 (even if you were in between ships on that date), you retain any medical and employment history and/or details about your past health. This is particularly around the time of leaving Merchant Navy service as a rating. If you are incapable of doing so or are the survivor of a member who was in service on 8 October 1993, the Trustee recommends that the family/survivors/estates of the member retain any relevant details and/or records.

We will write to you again once the outcome of the Court hearing is known and some post-hearing steps have taken place. This will probably be in November 2021.

There will also be updates posted from time to time on the members' website

<http://www.mnrpf.co.uk/>

#### **4 Updating Mercer about change of address/death**

If you have moved home, please contact Mercer to give them your new address – so that Mercer can contact you about any settlement and also for general pensions administration – see Q 9.6 in the enclosed Summary.

If a former member has died or dies, please see Q19.4 in the enclosed Summary about giving details of their survivors/personal representatives to Mercer.

#### **5 Who might be affected by the proposed settlement?**

The proposed settlement will only benefit certain categories of members and, if they have died, their spouse/civil partner and/or their respective estates.

In summary, increased benefits and/or payments will only be given under the proposed settlement to certain members who:

- retired on an IHER pension on or after 1 November 1989 and before 8 October 1993; or
- were in service on 8 October 1993 (which can include being in between ships on that date) **and** would have been eligible for an IHER pension when leaving service, had an IHER pension still been available after that time.

As part of the proposed settlement, the Fund will also be administered as if certain other groups of members with IHER pensions had always been entitled to their IHER benefits under the legal rules governing the Fund. Please see the details in the **enclosed Summary** for further information.

Even if you do fall into one of these categories, **it does not mean that your benefits will necessarily increase or that you will receive a payment** as a result of the settlement if it is approved by the Court. This will depend on each member's specific circumstances.

#### **6 Process for implementing the settlement, if approved**

If the settlement is approved, it will take a considerable amount of time for the Trustee and the Fund's administrator, Mercer, to work out who is eligible, trace and contact them and process their cases to establish whether any payment is due. Please therefore bear with us whilst we undertake this very complicated process.

If we believe that you could be eligible to receive a payment or additional benefits under the proposed settlement, we will write to you to explain what will happen and anything that you need to do. Depending on your circumstances, we may need you to provide us with certain information and documents.

There is no need for you to do anything at this stage to register or make a claim. If the settlement is approved by the Court, we will contact you.

## **7 The Mercer helpline**

If you would like more information about the proposed settlement, you can call our trained helpline agents on the freephone helpline below. This is a dedicated phone line for this case.

- **Helpline freephone number: 0800 197 6923**

The helpline agents are only able to explain the proposed settlement in general terms as described in the enclosed Summary. They are not able to provide any views or advice about the expected outcome in your particular case e.g. whether you will qualify and, if so, what compensation you might receive.

**You can also write to us or email us** at the address below. Again, we are not able to provide any views or advice about the expected outcome in your particular case.

Our address for enquiries by post is:

Merchant Navy Ratings Pension Fund  
c/o Mercer Employee Benefits  
Post Handling Centre U  
St James's Tower  
7 Charlotte Street  
Manchester  
M1 4DZ

Our email address for enquiries is: [mnrpmailings@mercerc.com](mailto:mnrpmailings@mercerc.com)

## **8 Warning – fraudsters**

Be careful if you are approached by any person other than Mercer about this issue. Anyone can be the victim of a scam.

Scammers try to persuade pension savers to transfer or to release funds. Scammers may also try to persuade members that they may be eligible for payments under the settlement or encourage members to apply, when they are not eligible. Please be very careful about this in relation to any claims you make or any payments made under the settlement.

Please be vigilant. We will never ask for your bank details over the telephone or via e-mail or text.

See the advice on avoiding pension scams by:

- The Pensions Regulator online at the following link:  
<https://www.thepensionsregulator.gov.uk/en/pension-scams>
- The FCA online at the following link:  
<https://www.fca.org.uk/scamsmart>

You can always contact us (see the contact details in section 7 above) to query something that does not feel right or if you have any concerns about any aspect of the claims process.

## **9 Warning – Claims companies (also known as claims handlers)**

Given the proposed settlement, you may also be approached by a commercial claims handling business offering to help you with this claim. **This is not required and is unlikely to be in your best interests.** These companies have **not** been authorised by the Trustee. They will not help your claim to be progressed. In fact, their involvement will hinder your claim and slow the process down for all members. That is why the Trustee will tell them that they are not usually prepared to deal with them about your claim.

We strongly recommend that you **do not engage with them** – the claims process has been designed to be simple and straightforward and Mercer are there to help you including through their freephone helpline above. If you are eligible for any compensation under the settlement, we want you to have it, and not share it with an external claims business who will want payment for their services. They may also want to charge you a fee for any monies you receive, on a no win no fee basis, so you are likely to be financially worse off. If you do engage with such a company, please ensure you read all the contract, including the small print to check what you will be required to pay them for their services.

**Again, there is nothing to do at this stage in terms of making a claim.**

## **10     Your records**

This section is only relevant for all members who were in service on 8 October 1993 (which can include being in between ships on that date). If you are already in receipt of an IHER pension or retired **before** 8 October 1993, then you are not in this category. See also Q20 in the enclosed Summary.

As we have previously noted, the Trustee strongly recommends that, where possible:

- you retain any medical and employment history and/or details about your past health (particularly around the time of leaving Merchant Navy service as a rating); and
- the family/survivors/estates of these members also retain details of and/or records related to the member's employment and medical history, if the member is incapacitated or dead.

As noted above, we will write to you against once the outcome of the Court hearing is known. This is likely to be in November 2021.

Yours sincerely

John Oldland  
Trustee Director

On behalf of the Merchant Navy Ratings Pension Fund Trustees Limited



**MERCHANT NAVY RATINGS PENSION FUND**

**Important Information**

**Summary**

**Proposed settlement of the High Court case about ill-health early retirement benefits**

**Introduction**

- 1** The Trustee is pleased to tell you about the proposed settlement in this case and what it will mean for members, if it is approved by the Court.
  - 2** The issues in the case relate to whether ill-health early retirement (“**IHER**”) pensions paid by the Fund from 1985 onwards were validly introduced, and the legal effect of later changes to those benefits.
  - 3** In particular:
    - from 1991, certain existing IHER pensions were reduced or suspended, and some new IHER pensions were paid at a reduced level; and
    - from 8 October 1993, no further IHER pensions were provided to members leaving service after that date.
  - 4** We answer the following questions below:
    - Q1** What is the case about?
    - Q2** Why was the case brought?
    - Q3** How does the proposed settlement work?
    - Q4** How have the agreed settlement percentages been arrived at?
    - Q5** What about members who took IHER after 1 April 1985 and before 1 June 1988?
    - Q6** What about members who took IHER between 12 June 1986 and 1 June 1988 and revaluation was added to their pension?
    - Q7** What about members where the Trustee is required to treat their Pre-78 Credits (defined in paragraph 7.4 below) as part of the pension which is tested at age 60 for a woman and age 65 for a man, to ensure that it is not less than the statutory guaranteed minimum?
    - Q8** How does the Court approval process work?
    - Q9** What will happen if the settlement is approved?
    - Q10** How long will it take to pay out under the settlement?
    - Q11** How have my interests been considered in the settlement?
    - Q12** Why is it in my interests for the case to be settled?
    - Q13** What has been the Trustee’s role in the settlement?
-

- Q14** What happens if the Court does not approve the settlement?
- Q15** What if I have points to raise?
- Q16** Where is the hearing and can I attend?
- Q17** Are there any tax issues I should consider?
- Q18** What if I am receiving means tested benefits?
- Q19** What if the member is dead?
- Q20** Do I need to keep any records?
- Q21** Can I see the settlement agreement?
- Q22** When will I hear about the outcome of the Court settlement hearing?
- Q23** Does the Pensions Regulator know about this case?

## **1 Question 1 – What is the case about?**

- 1.1** The Trustee asked the High Court a series of related and complicated questions about the introduction of IHER benefits in the Fund and the changes that were made to these in the 1990s.
  - 1.2** The focus of the main questions about IHER benefits were:
    - 1.2.1** What was the legal status of IHER benefits provided to members who left service on or after 1 April 1985 and before 1 June 1988, as these benefits were not covered in the legal rules governing the Fund (see Q5 below)?
    - 1.2.2** Whether between 12 June 1986 and 1 June 1988, it was correct to add to an IHER pension, the projected amount by which a deferred pension would have been revalued (that is, protected to an extent against inflation) during the period to Normal Pension Age (see Q6 below)?
    - 1.2.3** Was the Trustee permitted to ‘scale back’, i.e. reduce, IHER pensions for members who took IHER from 11 March 1991 onwards, based on their age and the severity of the disability arising from their ill-health?
    - 1.2.4** Was it permitted to review IHER pensions which came into payment after 1 November 1989 and as a result reduce or suspend them? This practice was reversed for the reviews that happened before 11 March 1991 – so it is the period from 11 March 1991 that was in issue in the case.
    - 1.2.5** Was it permitted to stop new IHER pensions for members leaving service on or after 8 October 1993?
    - 1.2.6** Whether in paying an IHER pension to members, the Trustee is required to treat Pre-78 Credits as part of the pension which is tested at age 60 for a woman and age 65 for a man, to ensure that it is not less than the statutory guaranteed minimum (see Q7 below).
    - 1.2.7** If members were entitled to claim additional IHER benefits, are there any time limits to be applied to that claim?
  - 1.3** This is an oversimplified list of the many complicated points arising in the case.
-

## **2 Question 2 – Why was the case brought?**

- 2.1** In early 2018, investigations by the Trustee with new external legal advisers, the law firm Linklaters LLP, raised questions over the legal effectiveness of changes that had previously been made to IHER benefits.
- 2.2** The uncertainty over these questions was such that the Trustee was advised by a top pensions barrister - a Queen's Counsel (QC) to ask the High Court for directions on what the correct legal position was. This type of Court application by pension scheme trustees for Court directions is typical in these situations.
- 2.3** As is also typical, the Trustee, represented by Linklaters LLP, has taken a neutral role in the case. Representatives with their own independent legal teams were appointed to argue the case on behalf of the members and the employers:
- 2.3.1** Two members, Anthony Redfern and Eric Knight, agreed to be appointed to represent those beneficiaries (broadly members and, where they have died, their spouse/civil partner and their respective estates) who stand to gain (including themselves) in respect of IHER benefits. They were arguing generally in favour of getting the most favourable outcome for the beneficiaries i.e. that the introduction of IHER benefits was valid, and that changes to them, including their removal were not valid. The law firm Pinsent Masons LLP acts for them.
- 2.3.2** Stena Line Limited agreed to be appointed to represent the employers (and any beneficiaries whose interests were aligned with the employers). The law firm Travers Smith LLP acts for them.
- 2.4** The representative parties are also advised by very experienced teams of barristers, including QCs.
- 2.5** On 25 February 2019, the Trustee formally started the case following discussions between the parties over the questions to be raised with the Court.
- 2.6** If the case had not been put on hold because of ongoing settlement discussions:
- 2.6.1** Stage 1 of the case – about legal issues of principle – would have been heard by a Judge in the High Court – during an 8-day trial in November 2020; and
- 2.6.2** Stage 1 would have probably been followed possibly by appeals and then by a further Stage 2 trial some two years later, to work out detailed matters involved with any compensation i.e. putting into practice the legal principles decided at Stage 1.
- 2.7** If the Court approves the settlement, neither of these trials (Stages 1 or 2) nor any appeals by the parties will need to go ahead. Instead, the Trustee will follow the terms of the settlement agreement to identify, and compensate, those people who may be entitled to payments or additional benefits under the settlement.

## **3 Question 3 – How does the proposed settlement work?**

- 3.1** The proposed settlement places the members affected by the issues in the case into three broad categories.
- 3.1.1** **Category A** – these are members whose IHER benefits were reduced or suspended following a review process. The relevant review process was applied from time to time on or after 11 March 1991 to IHER pensions which came into payment after 1 November 1989.

**3.1.2 Category B** – these are members whose IHER benefits were scaled back (reduced) – that means that the starting amount of their IHER pension was reduced by reference to the degree of the member’s ill-health and age at the time. This scaling back was only applied to IHER pensions which came into payment on or after 11 March 1991.

**3.1.3 Category C** – these are members where there is relevant evidence that they:

- (i) were in service (which could include being in between ships) on 8 October 1993, and had been in service long enough at that time to have qualified for an IHER pension (had new IHER pensions not been stopped on 8 October 1993); and
- (ii) left service (or in the future will leave service) before Normal Pension Age, due to permanent unfitness for sea service at the time of leaving service.

**3.2** Some members may fall into both Categories A and B.

**3.3** Under the settlement, the Trustee will consider the position of those members who are in one or more of the categories above and work out what it should provide as a result of the settlement (see paragraph 3.5 below about deceased members). There are two steps to this process:

**3.3.1 Step 1** – working out the ‘lost benefits’ in relation to the relevant member:

- (i) In the case of a Category A member, the lost benefits are the additional IHER benefits they would have received if their IHER pension had not been reduced or suspended following a review.
- (ii) In the case of a Category B member, the lost benefits are the additional IHER benefits they would have received if their IHER pension had not been scaled back.
- (iii) In the case of a Category C member, the lost benefits are the additional benefits they would have received if they had been treated as eligible for, and taken, an IHER pension.

In working out a member’s ‘lost benefits’, the Trustee will compare what members would have received on (1) the basis above against (2) the benefits they received in the past and are payable in the future.

**3.3.2 Step 2** – working out the relevant compensation under the settlement based on the ‘lost benefits’:

The Trustee applies an **agreed settlement percentage** to the member’s lost benefits to work out the compensation. This is based on an assessment of the likelihood of the members winning the relevant arguments had they been decided by the Court (see Q4 below).

**3.4** The compensation may be awarded in two ways:

**3.4.1** For past lost benefits, a lump-sum for arrears is paid, along with simple interest at 1% above the Bank of England’s base rate; and/or

**3.4.2** Going forward, if a pension is in payment to a member, or their spouse or civil partner, the pension is increased.

**3.5** Where a member has died, the settlement provides for the compensation to be paid to a widow, widower, civil partner or personal representatives (as applicable). (This may mean that if you are a widow, widower or civil partner of a member, there is compensation due to you directly in your own right, and also compensation due in respect of the deceased member which will be paid to their estate).



3.6 Please appreciate that this is an oversimplified summary. The settlement calculation process is complex, but we hope that this is a useful indication of the overall approach.

#### **4 Question 4 – How have the agreed settlement percentages been arrived at?**

4.1 You should also look at the section below (Q12) on why the settlement is believed to be in the interests of members.

4.2 The agreed settlement percentage in relation to each relevant category of member is key to how much compensation they will receive.

4.3 Categories A, B and C have been further sub-divided for these purposes. This has been done based broadly on:

4.3.1 the legal issues which apply to members in each sub-category; and

4.3.2 the amount of service that a member had at certain relevant dates.

4.4 Different settlement percentages have been negotiated for individual sub-groups of member within Categories A, B and C, rather than the same percentage for all members. This is because different arguments apply to the various sub-groups. Some sub-groups have stronger legal claims than others and this has been reflected in the different percentages. A different agreed settlement percentage can also apply to different parts of a member's pension (which is also classed as a sub-category).

4.5 However, to provide some guidance for the position of most affected members who will receive compensation:

4.5.1 In Category A – there are 18 relevant sub-categories varying between 13.5% and 74%.

4.5.2 In Category B – there are 6 relevant sub-categories varying between 37% and 91%.

4.5.3 In Category C – there are 6 relevant sub-categories varying between 35% to 50% - although some members in these categories will, in practice, have no loss given the benefits they have instead of IHER benefits.

4.6 The agreed percentages for each category have been negotiated by the advisers to the representative parties. As noted above, they are a compromise which is intended to reflect the legal merits (i.e. the strengths and weaknesses and likely success at trial) of the claims of the persons within each of the sub-categories and the risks and delay involved (see also Q12 below). As also noted above, members can fall into more than one sub-category. Where they do, they will receive aggregate compensation based on their loss in relation to the part of their benefit that applies to each of the relevant sub-categories.

#### **5 Question 5 – What about members who took IHER after 1 April 1985 and before 1 June 1988?**

5.1 As explained at paragraph 1.2.1 above, one of the issues in the case is the legal status of IHER benefits provided to members who left Service on or after 1 April 1985 and before 1 June 1988, as these benefits are not covered in the legal rules governing the Fund.

5.2 If the proposed settlement is approved by the Court, the Fund will be administered for this group of members on the basis that they had always been entitled to these IHER benefits under the legal rules governing the Fund.

**6 Question 6 – What about members who took IHER between 12 June 1986 and 1 June 1988 and revaluation was added to their pension?**

**6.1** As explained at paragraph 1.2.2 above, one of the other issues in the case is whether between 12 June 1986 and 1 June 1988, it was correct to add to an IHER pension the projected amount by which a deferred pension would have been revalued (that is, protected to an extent against inflation) during the period up to Normal Pension Age. There was therefore an issue here about whether relevant members have been overpaid and are continuing to be paid incorrect higher pensions than they should be.

**6.2** If the proposed settlement is approved by the Court, the Fund will, however, be administered for this group of members on the basis that they had always been entitled to these IHER benefits (with the inbuilt inflation protection provided) under the legal rules governing the Fund. The question of whether an overpayment arose will fall away.

**7 Question 7 – What about members where the Trustee is required to treat Pre-78 Credits as part of the pension which is tested at age 60 for a woman and age 65 for a man to ensure that it is not less than the statutory guaranteed minimum?**

**7.1** As explained at paragraph 1.2.6 above, a further issue arose in the case about whether in paying an IHER pension to members, the Trustee is required to treat Pre-78 Credits (see paragraph 7.4 below) as part of the pension which is tested at age 60 for a woman and age 65 for a man. This is to ensure that its weekly rate will not be less than the statutory guaranteed minimum.

**7.2** This therefore concerns a possible overpayment. This is due to the interaction between IHER pensions and Pre 78 Credits caused by those service credits awarded to some members in the 1980s being added on top of the minimum level of pension (GMP) required by statute to be paid to a member (instead of including it as part of the minimum).

**7.3** This is a highly technical area. In summary, it has become apparent during the case, that the Trustee has previously administered the Fund on what it now considers to be an incorrect and overgenerous basis for some members (and their survivors), leading those affected to be overpaid. This issue is now part of the settlement between the parties. It has been agreed that if you have been overpaid in the past over this issue, the past overpayments are effectively being written off and your corrected pension going forward will not be less than the amount that you are being paid now.

**7.4** In terms of further detail, Pre-78 Credits are, in summary, an amount of additional pension under the Fund which some members are entitled to in respect of each year of their employment as a seafarer before 6 April 1978, comprising in summary:

- (i) credits for up to 5 years awarded to Members in Service on 1 April 1985 or in Service between 1 April 1982 and 1 April 1985 and on the Merchant Navy Establishment Register on 1 April 1985; and
- (ii) credits for up to 8 years awarded to Members in Service or on the Merchant Navy Establishment Register on 1 April 1987.

**7.5** As part of the proposed settlement, the Trustee will check the pensions of affected members. As noted in paragraph 7.3 above, if the Trustee finds that there has been an overpayment in relation to this issue, the Trustee will not take any steps to recover or recoup the past overpayments. Although no-one will have the amount of their pension reduced below its current level, subject to that, the Trustee will reduce future affected pension payments (increased by the settlement where applicable) to their correct lower level. The corrected pension will then be increased each year in accordance with the Rules and any applicable legislation.

7.6 If you are affected by this issue, the Trustee will write to you further about it in the future.

## **8 Question 8 – How does the Court approval process work?**

8.1 The proposed settlement will be considered for approval by a Judge at a hearing over two days from (or shortly after) 11 October 2021.

8.2 The Judge will receive confidential legal opinions from the legal teams of the representative parties about why the settlement is considered to be in the interests of the members/beneficiaries and the employers. The Judge will only approve the settlement if to do so is considered to be in the overall interests of all of the members/beneficiaries and the employers.

8.3 If the Judge approves the settlement, they will make an order making it legally binding on all the members/beneficiaries and the employers. This will mean that any claim you may have in relation to the issues in the case will be settled, except for any claim you have in your individual capacity, by reason of factual circumstances specific to you which do not concern any of the issues in the case.

## **9 Question 9 – What will happen if the settlement is approved?**

9.1 We expect to write to update you after the Judge's decision, probably in November 2021. This is because there are a few other steps after Court approval that need to take place before the settlement becomes binding. After that, the Trustee will also add updates to the Members' website about the process at: <https://www.mnrpf.co.uk/> However, if you need updates to be posted to you because, for example, you have limited or no internet access, you can contact Mercer to request this - their details are at section 7 in the covering letter.

9.2 Since November 2020, the Trustee has been working with Mercer, the Fund's administrator, to prepare for implementation of the potential settlement. It will be a major administrative project, potentially involving thousands of members.

9.3 Payment will only be made under the settlement if the Court-approved requirements for a payment are met. The settlement also includes a detailed process for how it should be implemented by the Trustee.

9.4 In Category A and B cases, the Trustee expects that it already has adequate records (for most members) in order to work out the increased benefits and payments that should be made as a result of the settlement. It will therefore contact all relevant people to whom it believes compensation is due, having already calculated the compensation.

9.5 For those in Category C, the position is more complicated:

9.5.1 The Trustee does not know at this stage which members fall into Category C, as it does not know which members left service because they were permanently unfit for sea service.

9.5.2 Mercer will therefore write to all relevant persons for whom they have addresses to explain the claims process. Mercer will also ask those who wish to make a claim to complete a claim form and provide any supporting evidence.

9.5.3 The claim and any the evidence will then be reviewed, in order to establish whether or not the person left service due to being permanently unfit for sea service.

9.5.4 The Trustee may also need to check the information provided to it. Please be patient as this process will take some time.

9.5.5 **Please read section Q20 "Do I need to keep any records?" below.**

---

**9.6** In relation to Category A, B & C cases, the Trustee does not have addresses for all members or, if they have died, their spouse, civil partner or personal representatives. The Trustee has therefore already started a process to trace missing addresses, using external tracing companies. **If you move home, or a member has died and Mercer has not been informed, it is vitally important that you let them know** – their contact details are at section 7 in the covering letter.

## **10 Question 10 – How long will it take to pay out under the settlement?**

**10.1** The settlement process is highly complex. Since November 2020, the Trustee has been working with Mercer, the Fund's administrator, to prepare for implementation of the potential settlement. As mentioned at Q9 above, it will be a major administrative project, potentially involving thousands of members.

**10.2** The Trustee is not in a position at this stage to give dates for payment under the settlement to those in the various Categories. Please be assured that the Trustee will give the implementation of the settlement high priority and implement it without delay.

**10.3** As noted above, we expect to write to update you after the Judge's decision, probably in November 2021. This is because there are a few other steps, after Court approval, that need to take place before the settlement becomes binding. After that, the Trustee will also add updates to the Members' website about the process at: <https://www.mnrpf.co.uk/> However, if you would prefer updates to be posted to you because, for example, you have limited or no internet access, you can contact Mercer to request this - their contact details are at section 7 in the covering letter.

**10.4** The implementation of the settlement project will be monitored closely by the Trustee. The Trustee will also report in each Summary Annual Report to Members on the overall progress of the project.

## **11 Question 11 – How have my interests been considered in the settlement?**

**11.1** As set out in more detail at paragraph 2.3.1 above, the interests of the beneficiaries in this case in whose favour it is to argue for more generous IHER benefits, have been represented by the representative members, Mr Knight and Mr Redfern. Therefore, if you fall into this category, the representative members have been considering your interests. They have been advised throughout the case by the leading firm of Pinsent Masons LLP, and a very experienced team of barristers, comprising Queen's Counsel and junior counsel.

**11.2** These representatives and their legal advisers consider that it is in the overall interests of all the members and beneficiaries they represent to settle the case on the terms that have been agreed. This will be explained to the Judge at the hearing, who will consider approval of the proposed settlement. Part of the hearing will be confidential for this purpose. The Judge will privately review the strength of the case with the beneficiaries' legal advisers, to assess whether the settlement is in their overall best interests. Other parties will not be included in this part of the hearing.

**11.3** There is no need for you to agree to the settlement on an individual basis. If the proposed settlement is approved by the Judge however you will be bound by it.

**11.4** **If you disagree with the proposed settlement, then it is open to you to appear before the Court to oppose the settlement being approved. However, there may be cost consequences for you if you do. Not only might you need to meet all of your own costs and expense, but you may become liable for certain costs of the other parties. We**

**strongly recommend that you take independent legal advice if this is something that you wish to consider.**

**11.5 We also suggest, before taking any such step, that you first write to the Trustee or Mercer (who are acting on the Trustee's behalf) about your concerns. Mercer's contact details are at section 7 in the covering letter. We may also, if appropriate, or if you wish, inform Pinsent Masons LLP, the representative members' lawyers, about those concerns.**

**11.6 We are not able to discuss with you at this stage any queries in relation to your individual circumstances, including what you may receive under the proposed settlement. Only certain beneficiaries will receive compensation under the proposed settlement.**

## **12 Question 12 – Why is it in my interests for the case to be settled?**

**12.1** Whether settlement is in the overall interests of all the members and beneficiaries represented will be considered by the Judge in deciding whether to approve the settlement.

**12.2** The legal points at issue in the case have varying degrees of uncertainty. There would be risks involved in taking the case to trial and no guarantee of success for the beneficiaries. The settlement is intended to reflect those risks in the way that it delivers an agreed percentage of the lost benefits for each category of member.

**12.3** There are also other factors to consider:

**12.3.1** Whilst the case was due to be heard in November 2020, given the issues involved, there was the prospect of appeals by either party. This would delay a final resolution.

**12.3.2** In addition, the case necessarily had to be structured into two stages. Stage 1 (the November 2020 trial) was dealing essentially with legal issues of principle. Only after the answer to those were known could the case proceed to Stage 2 perhaps two years later, to work out detailed matters involved with any compensation. Again, final resolution would only be after appeals over Stage 1 and after Stage 2.

**12.3.3** Therefore, without settlement, the case would have carried on for several further years, and if the representative members had won, there would have been a further delay in delivering compensation under the settlement.

**12.4** All of these issues will be considered by the Judge, as well as the legal merits of the case.

## **13 Question 13 – What has been the Trustee's role in the settlement?**

**13.1** The Trustee has a neutral role in the case. It wishes to have certainty as to how to administer the Fund. Had the case proceeded to trial in November 2020, it would have been for the representative parties for the beneficiaries and employers to argue out the case.

**13.2** That said, the Trustee has been supportive of attempts to settle the case, given the earlier certainty that it will provide for the Fund, beneficiaries and employers and the saving of substantial legal costs. The Trustee has therefore sought to facilitate the settlement process as far as possible.

**13.3** The Trustee also has the key role in implementing the settlement. It has therefore worked closely with its professional advisers and Mercer, to seek to ensure that that the proposed settlement can be implemented and the administration systems of the Fund are ready to do so.

## **14 Question 14 – What happens if the Court does not approve the settlement?**

**14.1** We expect the Court to approve the settlement and this to be an unlikely outcome.

**14.2** However, if for some reason the settlement was not approved and the parties could not reach agreement to accommodate the issues of concern identified by the Court, it would be necessary to go back to litigating the issues in this case. The first step would be to ask the Court for a new trial date.

**15** **Question 15 – What if I have points to raise?**

**15.1** The parties are represented by very experienced legal teams who have considered all available relevant matters in agreeing to the settlement.

**15.2** There is therefore no need for you to do anything, apart from keeping your/the member's ill health and other records, as applicable (see Q20 below) and notifying Mercer of any change in address.

**15.3** If, however you do wish to raise anything, we suggest that you first write to the Trustee or Mercer. Mercer's contact details are at section 7 in the covering letter. (See also Q11) However, they will not be able to discuss with you at this stage any queries in relation to your individual circumstances, including what you may receive under the proposed settlement.

**15.4** Please note that the Trustee may wish to inform the Court about any communications received from members for the purposes of the hearing in October, and so we may share your letter to us, or a summary of any points made, with the Judge and the other parties. We will not share your name or personal details without your agreement, and so we will anonymise any letters or comments received unless you agree otherwise.

**15.5** Please note that if we believe that you are eligible to receive a payment or additional benefits under the settlement, we will write to you about that in due course. There is **no need for you to do anything at this stage to register or make a claim. We will contact you.**

**15.6** **Please do not contact us at this stage about your individual circumstances. However, you should keep your ill health and other records if you (or the member you might claim in respect of) are potentially in Category C (see Q20 below). You should also notify Mercer of any change of address.** Mercer's contact details are at section 7 in the covering letter.

**16** **Question 16 – Where is the hearing and can I attend?**

**16.1** The hearing has been listed to be heard over two days from (or shortly after) 11 October 2021.

**16.2** In normal circumstances, the hearing would be in person at the High Court in London. Given the removal of Covid restrictions, we expect the hearing to be in person. If there are any new Covid restrictions, then the hearing may need to be live-streamed over the internet.

**16.3** However, given the number of interested beneficiaries with potential claims, a large number of whom have health problems and are elderly, the Court has been requested to allow the hearing to be live streamed over the internet even if the hearing is held in person. Permission from the Judge is needed for this to happen. We have not yet heard from the Court about this request.

**16.4** When we have further details about the arrangements for the hearing, we will put an update on the members' website. This will probably be in early October. If permission for live-streaming has been given, this update will include where it can be accessed.

**16.5** Please note that even if the Judge gives permission for the hearing to be live-streamed, not all of the hearing will be open to the public in person or live streamed. This is because it is typical for certain parts of the hearing to be confidential, for example where the Judge wishes to consider the confidential legal advice given by the lawyers to their representatives about the case.

**17 Question 17 – Are there any tax issues I should consider?**

- 17.1 The pension payments that are made (whether arrears or future payments) will be taxed in a similar way to other pension payments for the purposes of income tax.
- 17.2 However, based on advice received and communications with HMRC (the Inland Revenue), we do not expect there to be issues over whether payment of arrears is an unauthorised payment for tax purposes.
- 17.3 It is possible that your personal position means that there are tax implications for you in receiving a payment or increased benefits under the proposed settlement. We expect this to only be an issue for a relatively small group of members.
- 17.4 We will write to members (and/or their beneficiaries) about this further at a later stage of the process and prior to making any payment to or in respect of members. We will also suggest that those affected members take professional advice on their own tax position.

**18 Question 18 – what if I am receiving means tested benefits?**

- 18.1 It is possible that if you are receiving means tested benefits from the state or any other source, that these could be affected if you receive compensation under the settlement. This is something that you should consider.
- 18.2 We will remind you about this at a later stage of the process and prior to making any payment to or in respect of members

**19 Question 19 – What if the member is dead?**

- 19.1 Where the relevant member has died, the settlement provides for a spouse or civil partner in receipt of a pension in respect of that member to be eligible for a payment and/or increased benefits in their own right (where applicable).
- 19.2 The proposed settlement also provides for the Trustee to accept claims from the personal representatives of a deceased member, so that payments can be made to their estate.
- 19.3 The Trustee does not have contact details for everyone who may benefit from the potential settlement. In particular, if the member has died, then their estate can still benefit and you may know who their personal representatives or survivors are.
- 19.4 If you know any member who left service after 8 October 1993 because they were permanently unfit for further sea service, or if they have died, their personal representatives or survivors, then please suggest to them that they contact Mercer. If the member has died, you can provide their name and any contact details for them or their personal representatives to Mercer (no other personal information please). Mercer's contact details are in the covering letter.

**20 Question 20 – Do I need to keep any records?**

- 20.1 This is only relevant for members who were in service on 8 October 1993 (which can include being in between ships on that date), and therefore are potentially in Category C.
- 20.2 If you are potentially in Category C, then to make a claim you will need to provide supporting evidence that you left service due to permanent unfitness for sea service. If this is relevant to you, we will give you further guidance about this at a later date.
- 20.3 It may be that you have a Form ENG3 "*Notice of failure to meet medical fitness standards for the Merchant Service*" or "*Notice of Failure/Restriction*", or a similar form, which states that you (or the member you are claiming in relation to) were permanently unfit for further sea service or

similar wording. It is important that you keep this Form ENG3 or similar form safe because it will be needed to support any claim you make under the settlement.

**20.4** In addition, the Trustee strongly recommends that, where possible, you retain any medical and employment history and/or details about your past health (particularly around the time of leaving Merchant Navy service as a rating). The Trustee also recommends that where possible, your family/dependants also retain details of, and/or records related to, your employment and medical history in the event of your incapacity or death. This includes the contact details of any persons or organisations who might have evidence about your medical and employment history.

**20.5** The Trustee also strongly recommends that, where members have died, their spouse/civil partner/personal representatives keep such records/details/contact information. It will take some time to process claims for Category C members. It is therefore important that records are gathered and kept safe.

**21 Question 21 - Can I see the settlement agreement?**

**21.1** The settlement agreement is very lengthy and complicated. For any member who wishes to see it after the Court hearing, it will be available through Benpal, the secure online service which provides information to members who have activated the service through the members' website.

**21.2** If you experience any difficulties in accessing Benpal or activating Benpal, then please contact the Mercer administration team:

By email: [mnrpf@mercer.com](mailto:mnrpf@mercer.com)

By freephone: 0800 197 6923

In writing:

Mercer Limited  
Post Handling Centre U  
St James's Tower  
7 Charlotte Street  
Manchester  
M1 4DZ

**21.3** A copy of the Agreement is also available on request to Mercer before or after the hearing, if you are unable to or do not wish to access the Agreement at a later stage through Benpal.

**22 Question 22 – When will I hear about the outcome of the Court settlement hearing ?**

**22.1** We will write to you about the outcome. The letter will also appear on the members' website. We expect to write to update you after the Judge's decision, probably in November 2021 (see Q9.1).

**23 Question 23 – does the Pensions Regulator know about this case?**

**23.1** The Pensions Regulator does not have any specific role in relation to the issues covered by the case, but yes, the Pensions Regulator is aware of the case and the proposed settlement. After the Court approval, the Trustee will be providing further details to the Pensions Regulator.

*This document summarises certain terms of the settlement agreement. The terms of the settlement agreement will however prevail including if there is any inconsistency between this document and the settlement agreement.*

**August 2021**