

Neutral Citation Number: [2022] EWHC 439 (Ch)

Case No: PE-2019-000004

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 24 February 2022

Before :

Mrs Justice Bacon

Between :

**Merchant Navy Ratings Pension Fund Trustees
Limited**

Claimant

- and -

(1) Stena Line Limited

Defendants

(2) Eric Knight

(3) Anthony Redfern

Paul Newman QC (instructed by Linklaters LLP) for the Claimant

**Brian Green QC and Sebastian Allen (instructed by Travers Smith LLP) for the First
Defendant**

**Michael Tennet QC and David Pollard (instructed by Pinsent Masons LLP) for the Second
and Third Defendant**

Hearing dates: **24th February 2022**

APPROVED JUDGMENT

MRS JUSTICE BACON:**Introduction**

1. This is an application pursuant to CPR r. 19.7 for the approval of a compromise of a part 8 claim brought by the Trustee of the Merchant Navy ratings pension Fund (the “scheme”) for directions on various questions arising from the provision, revision and removal of enhanced ill health early retirement (“IHER”) benefits first introduced into the scheme in 1985.
2. The first defendant is Stena Line Limited, which is a participating employer in the scheme. Under a representation order made by Master Teverson on 11 April 2019 it represents, in these proceedings, all of the participating employers, members and beneficiaries of the scheme whose interests are that the relevant questions are answered so as to result in the most limited or more limited IHER benefits for members.
3. The second and third defendants, Mr Knight and Mr Redfern, are pensioners in receipt of early retirement pensions from the scheme. Under the same representation order they are joined to represent all of the members and other beneficiaries of the scheme whose interests are that the relevant questions are answered so as to confer the most extensive, or more extensive, IHER benefits for members.
4. That rather concise explanation of the two opposing classes masks the fact that the situation as to the represented beneficiaries is in fact very complex. Since the compromise relates to a series of issues, a beneficiary might be effectively represented by the first defendant for some issues but by the second and third defendants for others. The beneficiaries represented by the first defendant and the second and third defendants respectively have therefore not been specifically defined; rather those opposing classes are defined conceptually by reference to the overall opposing interests in the way that I have just set out.
5. The compromise is set out in a settlement agreement that was originally dated 27 August 2021. That was agreed by all the parties to the claim, subject to the approval of the court, and I understand that it was the product of almost a year of negotiations between the parties and their legal advisers. The hearing to determine whether the court would approve that settlement agreement was listed before me on 13 October 2021. On the afternoon of 12 October 2021, the hearing was adjourned as a result of a development discovered by the Trustee concerning issues of potentially incorrect administrative practice. Those issues could, depending on how they were resolved, affect the calculation of the compensation agreed in the original settlement agreement.
6. Since the adjournment, around 13 new issues potentially affecting the level of the scheme benefits have been identified by the Trustee. The parties have engaged in extensive further negotiations to discuss those issues leading to a revised settlement agreement dated 18 February 2022.
7. In summary, the majority of the settlement agreement is unchanged, and, in the first place IHER compensation will be paid largely on the basis of the proposals in the original settlement agreement. The parties have, however, agreed a mechanism for recalculating and, if necessary, adjusting any further compensation payable in light of the resolution of the new issues. Those recalculations will take place at intervals broadly of the Trustee’s choosing and will involve either additions or reductions to the further benefits payable to the affected members, subject to a moratorium on the implementation of any recalculations until 1 April 2024.

8. Under CPR r. 19.7(6) the court's approval can only be given where the court is satisfied that the settlement is for the benefit of all the represented persons. For those purposes, I have been provided with written submissions from the Trustee, short skeleton arguments from the defendants and lengthy confidential opinions for the first defendant and the second and third defendants respectively, with updates in all cases to reflect the terms of the revised settlement agreement. The confidential opinions set out the reasons why the first defendant, on the one hand, and the second and third defendants, on the other, consider that the settlement is for their benefit and for the benefit of those whom they respectively represent. Those opinions in turn refer to opinions from further specialist advisers, in particular tax and actuarial advisers.
9. I have in addition heard submissions in open court from Mr Newman QC for the Trustee, and in separate private submissions from Mr Tennet QC for the second and third defendants, and Mr Green QC for the first defendant, in that order. The Trustee has been effectively neutral as to the outcome of the settlement subject to ensuring that what is agreed is administratively workable.
10. Various of the scheme members, in addition to of course the second and third defendants themselves, have attended the hearing remotely by videolink. I have not heard separate submissions from any of them, save for one member, Mr Hall, who contacted the Trustee to ask that some concerns about the settlement be relayed to the court. I will address this specifically shortly.

Background

11. For these purposes I set out only a very short summary of the background which has led to the present settlement.
12. The scheme was established in 1978 to provide an occupational pension scheme for ratings of the British Merchant Navy providing benefits on a defined benefits basis. IHER benefits were originally introduced at a time when the actuarial valuation of the scheme recorded a £28 million surplus. In light of that valuation, the then management committee for the scheme agreed to introduce a IHER pension under which a member with a minimum of ten years' membership could retire early on the grounds of ill health, with an immediate pension that would not be actuarially reduced for early payment. The change was recorded in the minutes of the management committee meeting held on 12 November 1985 and was notified to members in an announcement in January 1986. It was never, however, formally embodied in an amendment to the scheme rules.
13. In 1988, following a further actuarial valuation, again disclosing a substantial surplus, the IHER pension was improved by extending access to members with two or more years of pensionable service. Again, the amendment was notified in an announcement in February 1989 without any formal amendment to the scheme rules. The amendments were finally documented in the scheme rules in 1990.
14. What then happened was that there was a far larger than expected incidence of members, including younger people, taking early retirement on ill health grounds, who accordingly benefited from the new IHER pension. The scheme went into deficit and the IHER pension claims were such that, if the benefit continued unamended, it would seriously undermine the financial security of the scheme. In March 1991 there was therefore an announcement that the amount of the IHER pension would – in addition to periodic review that would lead to a reduction of the pension paid in certain circumstances – be subject to scale-back, taking account of the relevant member's age and level of disability.

15. In April 1993, the scale-back and review provisions were (respectively) incorporated into and expanded in the formal scheme provisions, purportedly with retrospective effect from March 1991. In October 1993, the scheme provisions were again formally amended, removing the IHER benefit altogether for future cases and replacing it with a considerably reduced IHER benefit.
16. In 2001, the scheme was closed in its entirety to new members and to new accruals with effect from May 2001.

The claim and the settlement negotiations

17. Against the background of the events that I have just summarised, the claim raised a series of issues concerning the validity and effect of the IHER benefits as originally introduced in 1985 and as subsequently amended before being formally withdrawn to members in 1993.
18. By a part 20 claim form filed on 13 January 2020, the second and third defendants counterclaimed, on their own behalf and on behalf of those they represented, seeking an order for the payment by the Trustee of arrears of pension due under the IHER benefits provisions. The counterclaim is, however, only relevant if a limitation period is applicable to any of the benefits said to have been underpaid. It was initially stayed by agreement and will be discontinued if the settlement agreement is approved.
19. The trial was to proceed in two stages with stage 1 being initially listed to commence in November 2020. By late October 2020, settlement negotiations had reached an advanced stage, as a result of which the parties agreed to vacate the trial while they continued to negotiate the detailed terms of the settlement.
20. Those negotiations were protracted, not least because by any standards this was an exceptionally complex claim to settle because of the different circumstances of the members and the numerous changes that had been made, at various stages, to the scheme.
21. During those detailed negotiations, it was agreed that it would be necessary to obtain input from HMRC. The Trustee's solicitors therefore wrote to HMRC in January 2021 on behalf of all parties with a request for clearance over the tax treatment of certain payments to be made under the settlement. HMRC initially declined to provide the confirmation sought. A modified request for guidance was therefore made in May 2021, to which HMRC responded in July 2021. Further questions were then asked, with a response from HMRC in August 2021.
22. The original settlement agreement was then signed on 27 August 2021. The revised settlement following the developments I have already outlined was agreed on 18 February 2022.
23. In the circumstances that I have described, the settlement agreement is unsurprisingly extremely detailed and runs to almost 200 pages. I am told that this is the most complex pension settlement agreement that any of the counsel before me have ever negotiated. It is the product of a vast amount of work on all sides, including, as I have already noted, the assistance of actuarial and specialist tax advisers.
24. I will not therefore attempt to summarise its terms. The headline point is that the settlement operates by dividing the members affected by the issues in the claim into three broad categories, A, B and C, each of which is in turn divided into multiple sub-categories. The compensation payable to the members in each of those categories and sub-categories is calculated by working out the benefits

that the member has lost on the bases defined in the agreement, and applying a settlement percentage to those benefits which is based on the agreed assessment of the likelihood of those members succeeding on the relevant issues in the claim. Depending on the categories and sub-categories, the settlement percentages vary between 13.5% and 91%.

25. There are further provisions dealing with specific issues of compensation, calculation and implementation. In particular, I note that during the course of the negotiations, various further issues were raised that were not originally within the Trustee's details of claim. The parties agreed that these issues both could and should be addressed as part of the settlement process and I have given permission to amend the claim form in relation to those issues.
26. The settlement will deliver substantial compensation to members. The current actuarial estimate is that the value of the settlement to the members in Category A is £11.4m, Category B £24.2m, and Category C £27m, giving a total of £62.6m. The parties were, however, careful to emphasise that these were estimates, and in particular in relation to Category C the estimates are made on a very broad brush basis.
27. As regards the new issues raised following the adjournment of the hearing listed for last October, the effect of the revised settlement agreement is to provide a framework under which these can be addressed in due course through adjustments to the compensation payments to beneficiaries. Those adjustments will only be made, however, once the new issues have been resolved.
28. It is important to emphasise that the new issues are *not* being resolved as part of this settlement. Each will require independent consideration and assessment and may lead to separate court proceedings. It is, however, very much in the interests of the parties that as much as possible of the original settlement should now, subject to the court's approval, be implemented without further delay, which is why the revised agreement has been adopted on the basis that I have just described. In that regard I am told that a significant amount of work has already taken place to prepare for the implementation of the settlement to minimise any delay following this hearing.

Mr Hall

29. Before considering the approval of the settlement, I need to say something about Mr Hall, who is the member who has written to the Trustee in the last few days. Mr Hall is a former member of the Trustee board and was a member of that board in 2018 when the claim first arose. It is not clear whether he will be affected by the settlement. Since leaving the Trustee board, I am told that he has made various complaints about the board and their advisers which do not relate to these proceedings.
30. As for these proceedings, Mr Hall has known about them from the outset, including from his membership of the Trustee board. He will also have been kept informed of the progress of these proceedings and the settlement negotiations through the regular and detailed communications with members on this issue. He did not at any time raise an issue with the settlement procedure until last November when he contacted the solicitors for the second and third defendants, and I have seen an attendance note and text message exchange that he had with those solicitors at that time.
31. He has now, in the last two days, had an email exchange with the solicitors for the Trustee in which he asks various questions and has raised various concerns about the procedure.
32. Mr Newman has addressed me on the issues raised by Mr Hall and has answered all of them. I am satisfied with his answers. In particular, Mr Hall expresses concern about whether the members'

interests have been properly represented. I am satisfied that they have been and, in particular, I am satisfied that the members have been kept properly informed regarding the settlement process. All of the counsel before me are in agreement that there is nothing in Mr Hall's communications which should cause me to withhold my approval of the settlement. I agree.

33. I therefore turn to the approval of the settlement.

Approval of the settlement

34. As I have noted, the court's approval can only be given where the court is satisfied that the settlement is for the benefit of all the represented persons.

35. I have considered carefully the detailed explanations given in the confidential opinions filed for the opposing parties, namely the first defendant on the one hand and the second and third defendants on the other. Neither side has seen the opinion of the other. Each party considers that the settlement represents a benefit to it, having regard to its estimates of the strict merits of the respective legal positions which take account of the litigation risk, together with the value to both sides of bringing the litigation to a close in a prompt and efficient manner at this stage.

36. I do not need to set out any of the detail of the opinions, and could not do so in any event in open court. It suffices to say that I am satisfied, on the basis of the very careful consideration set out in the opinions for both sides, that the settlement is for the benefit of all represented persons. That benefit does not merely arise from the relationship of the compensation figures agreed to the merits of the cases as assessed by each side, but it also arises, as I have just noted, from the value of a timely resolution of this litigation which has by now been adjourned on numerous occasions.

37. The time factor is not merely one of administrative convenience, but is one of real value in particular to the beneficiaries of the scheme, most of whom are likely to be elderly and infirm. Absent the present settlement, there would be potentially years of litigation ahead before the legal process was concluded, even without taking into account any appeals (which would be a distinct possibility given the sums of money at stake). The settlement has also enabled the parties to agree a compensation mechanism that will hopefully be more tax efficient in some respects than if the issues had simply been litigated.

38. I am also satisfied with the reasons given by both sides for their agreement to the specific provisions in the revised settlement. That has involved careful negotiation of the framework under which future adjustments may be made in relation to the new issues, in order to meet the concern of the representative beneficiaries that members should not be left in a worse position for their existing pensions as a result of any historic overpayments. A key factor which has driven both sides' ultimate agreement of the revised terms is that the agreed mechanism enables the parties to resolve the IHER issues now, particularly when it is apparent that there are numerous others issues that will need to be addressed going forward.

39. On the basis of what I have been told by counsel on all sides, I am also satisfied that this is a workable settlement, despite the complexity of the settlement and the detailed provisions for future adjustments agreed under the revised settlement.

Notification

40. A final question is whether I should postpone the effective date of my order in order to allow any person affected by it to apply to the court if they consider that, due to their particular circumstances, they should not be bound. That is something that the court would normally consider doing where there are affected parties who have not been notified and who are unaware of the proposed settlement.
41. In this case there has been a substantial notification process for both members and employers. That included, most recently, notification of the reasons for the adjournment of the original hearing and the proposals for the revised settlement agreement. The members and employers have also been told of this hearing date and the means by which they might attend. With the exception of Mr Hall, whose position I have addressed already, the Trustee has not had any communications from either members or employers with substantial concerns regarding the proposed settlement; nor have any members or employers, other than those represented before me today and Mr Hall, asked to make any representations to the court in relation to the settlement, either in writing or at this hearing.
42. In those circumstances, I do not consider that there is any necessity to postpone the effective date of my order. The settlement agreement provides that if approval is granted, the Trustee will, within 14 days of the agreement becoming effective, send out letters and agreed terms to the members and employers, informing them of the approval and the immediate next steps for the implementation of the settlement, and that is also embodied in the draft order before me.

Conclusion

43. I will therefore approve the settlement on the terms of the draft order that has been provided to me.