



MNOFP Trustees Limited
Leatherhead House, Station Road,
Leatherhead, Surrey KT22 7ET

employer.enquiries@mnopf.co.uk

«Name»
«JobTitle»
«CoName»
«Address»

7 September 2010

Dear «Dear»

Merchant Navy Officers Pensions Fund (The "MNOFP")
«ReCompany» - «Ercod»
Section 75 Debts

I write further to my letters dated 23 December 2009 and 22 April 2010 regarding debts payable under Section 75 of the Pensions Act 1995 (as amended).

1. BACKGROUND

As explained in my earlier letters, the High Court handed down a judgment in the Cemex case on 10 December 2009. This judgment clarified the relevant test for determining when a Section 75 debt is triggered by an employer which ceased to employ its last active member prior to 6 April 2008.

A further High Court decision (in *PNPF Trust Company Ltd v Taylor and others* - known as the Pilots case) was handed down on 28 June 2010. This decision has further refined the relevant test for these purposes. Further details are set out in section 2 of this letter.

As a result of the Pilots decision, the Trustee now requires slightly different information from Participating Employers to that requested in my letter of 22 April 2010.

Please can you therefore complete the form attached to this letter and return it to the MNOFP Executive at the above address as soon as possible and **by 30 September 2010** at the latest. Unfortunately, it is necessary to complete and return the attached form even if you have already completed and returned the form attached to my letter of 22 April 2010. Notes on completing the form are included in section 3 of this letter.

2. THE PILOTS CASE

The Pilots case was a claim brought by the trustee of the Pilots' National Pension Fund, an industry-wide scheme for UK marine pilots with some similarities to the MNOFP. Amongst other issues, the High Court was asked to consider the relevant test for determining when a Section 75 debt is triggered by an employer which ceased to employ its last active member prior to 6 April 2008.

In line with the decision in the Cemex case, the High Court decided that, if an employer ceased to employ its last active member prior to 6 April 2008, this did not trigger a Section 75 debt if the employer continued to employ at least one person eligible to become a member, whether or not joining the scheme would require trustee consent. However, departing from the decision in the Cemex case, the High Court also held that continuing to employ a deferred or pensioner member was not enough to prevent a Section 75 debt being triggered (unless the deferred or pensioner member was eligible to rejoin the scheme).

For the purposes of the MNOFF, deferred and pensioner members are not eligible to rejoin the MNOFF if they are over Normal Pension Age (age 61). **Broadly, therefore, the Pilots case means that a Participating Employer in the MNOFF which ceased to employ its last active member prior to 6 April 2008 will trigger a Section 75 debt when it ceases to employ "Officers" under age 61.**

The Trustee intends to apply this test for the purposes of determining when Section 75 debts are triggered and calculating the amounts of those debts. In order to do so, the Trustee requires certain information from all Participating Employers which ceased to employ their last active member of the MNOFF prior to 6 April 2008. Further details are set out in section 3 of this letter.

3. REQUEST FOR INFORMATION

Please complete the form attached to this letter and return it to the MNOFF Executive at the above address as soon as possible and **by 30 September 2010** at the latest. If more than one Participating Employer is identified above, please complete one form for each Participating Employer.

When completing the form, please note the following:

- (a) "Officer" is defined for the purposes of the MNOFF as including the following: Masters, Navigating Officers, Engineer Officers, Radio Officers (excluding trainees), Refrigerator Engineers, Electrical Engineers, Boilermakers, Pursers and Catering Officers, and such Officers engaged on the shore staff of the Participating Employer. The Trustee may also include within the scope of "Officers" other persons holding any position of authority on board ship or such persons engaged on the shore staff of the Participating Employer.
- (b) An employee may be an "Officer" even if he has never been a member of the MNOFF or is a member of another pension scheme. He may also fall within the scope of this definition if he is now a deferred or pensioner member of the MNOFF, so long as he continues to be an employee and is under age 61.

If you are unsure which of the Participating Employer's employees are "Officers", please contact the MNOFF Executive at the above address.

Participating Employers have a legal duty (under Regulation 6(1)(a) of the Occupational Pension Schemes (Scheme Administration) Regulations 1996) to disclose the requested information to the Trustee. **If Participating Employers are unable or fail to provide the requested information, the Trustee will need to make certain assumptions in order to determine if and when a Section 75 debt was triggered, and the amount of that debt.**

4. NEXT STEPS

Once the deadline for responding to this letter has passed, the Trustee will determine which Participating Employers have triggered Section 75 debts and calculate the amount of those debts. The Trustee will then write to all affected Participating Employers to confirm the amount payable.

In the meantime, Participating Employers are advised not to make payment in respect of any Section 75 debts of which you have previously been notified. The Trustee will not be pursuing payment of any such debts pending completion of the process described above.

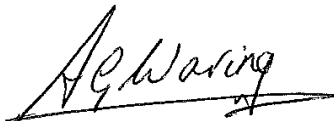
However, Participating Employers should be aware that the Section 75 debt legislation is different and separate from the provisions of the MNOFF Rules under which the Trustee may require Participating Employers to pay deficit contributions. The triggering and payment of a Section 75

debt does not mean that a Participating Employer ceases to be liable for the payment of deficit contributions where so determined by the Trustee. Participating Employers must therefore continue to pay deficit contributions under Rule 5.2A as invoiced.

Finally, Participating Employers which ceased to employ active members before 6 April 2008 but which continue to employ "Officers" under age 61 should be aware that they remain potentially liable for a Section 75 debt, which will be triggered when the Participating Employer ceases to employ such Officers.

If you have any questions regarding the content of this letter or the completion of the attached form, please contact the MNOF Executive at the above address.

Yours «Yours»

A handwritten signature in black ink, appearing to read 'A. Waring', with a horizontal line underneath.

«CC»

Andrew Waring
Chief Executive
MNOF Trustees Limited

NAME OF PARTICIPATING EMPLOYER:

EMPLOYER CODE:

SECTION A: Employment of active members of the MNOFF

Has the Participating Employer ceased to employ active (contributing) MNOFF members?

Yes No

If the answer is "yes", please provide the date on which the last member ceased contributing and then complete Section B of this form:

.....

SECTION B: Employment of "Officers" under age 61

(1) Did the Participating Employer cease to employ "Officers" under age 61 on the date specified in Section A?

Yes No

(2) If the answer to (1) is "no", has the Participating Employer continued to employ "Officers" under age 61 continuously since the date specified in Section A?

Yes No

If the answer to (2) is "no", please provide the date on which the Participating Employer first ceased employing "Officers" under age 61:

.....

If the answer to (2) is "yes", I hereby confirm that the Participating Employer will immediately inform the Trustee in the event of the Participating Employer ceasing to employ all such persons.

Signed Date

On behalf of [Name of Participating Employer]

Note: Please refer to section 3 of the letter for details of who is an "Officer".