

## Ministry of Justice Statement in Fee-paid Judicial Cases Update No.2 (2019)

This update, on behalf of the Ministry of Justice (MOJ), is made in response to the Court of Justice of the European Union's (CJEU) judgment in O'Brien No.2 on 7 November 2018.

The MoJ is aware that past and present fee-paid judicial office holders would like to know what steps are being taken in response to the CJEU judgment. This update should be read in conjunction with the earlier communication entitled *Ministry of Justice statement in fee-paid judicial cases*, published on Gov.UK on 18 February 2019.

### Fee-paid Pension Entitlement Pre 7 April 2000

Following the Supreme Court judgment in O'Brien v MOJ in 2013 (O'Brien No.1), the MOJ established the Fee-paid Judicial Pension Scheme (FPJPS) to provide a pension remedy for fee-paid service from 7 April 2000. The FPJPS was a new statutory scheme introduced on 1 April 2017. Pending FPJPS becoming operational, the MOJ made voluntary interim payments in lieu of pension to eligible retired claimants to mitigate their losses.

The CJEU judgment in O'Brien No.2 deals with the question of pre 7 April 2000 fee-paid service. The MOJ confirmed to the Employment Tribunal (ET) on 14 February that eligible claimants who have already established (under the Part Time Workers Regulations 2000 (PTWR)) a successful claim for a pension remedy in respect of a fee-paid appointment, would be entitled to further remedy in respect of claimed pre 7 April 2000 service in that appointment, provided that: the pre 7 April 2000 service was continuous with the service from 7 April 2000; and that appointment was held up to retirement at age 65. The MoJ confirms that the same applies where the eligible claimant has retired prior to 65 having met the relevant conditions necessary for such retirement.

To provide a pension remedy to these claimants, the MOJ's intention is to seek legislative changes to pension regulations to recognise their pre 7 April 2000 fee-paid service. The MOJ is mindful of the delay that a legislative remedy will entail and that these claimants, most of whom are retired, have already had to wait. Therefore, as was the practice in response to O'Brien No.1, the MOJ intends to offer eligible retired claimants a voluntary interim payment in lieu of pension subject to the necessary approvals.

### Voluntary Interim Payment in Lieu of Pension

Eligible retired fee-paid judicial office holders in England & Wales, Scotland and Northern Ireland would be able to apply for an interim payment in lieu of pension for their pre 7 April 2000 fee-paid service, pending legislative changes. We will make a future announcement detailing when and how eligible judges should apply.

Reflecting the approach taken with recent interim payment offers, the payments will comprise a lump sum and service award element, together with a sum representing

pension payments and interest from the date of retirement up to and including March 2020, subject to any relevant deductions for tax as advised by HMRC. When a statutory pension remedy is introduced, there will be a reconciliation between the voluntary interim payments in lieu of pension and the statutory scheme.

#### Judicial Claims Team

The MOJ is establishing the Judicial Claims Team (JCT) to handle the claims of eligible claimants. From O'Brien No.1, we know that MoJ holds very limited data about judges' service history before 2006 and even less data in relation to service before 7 April 2000. The purpose of the JCT is help claimants to establish their pre 7 April 2000 service history, to calculate the consequent pension entitlement and to make voluntary interim payments in lieu of pension.

We are planning for the JCT to be operational from May 2019. On 25 April, the MOJ will provide a further update to the ET and on Gov.UK, explaining the progress in setting up the JCT and how the team will support claimants. The JCT will gather all relevant data held by HMCTS, Judicial College, Judicial Office and MoJ payroll administrators. Claimants will be asked to submit their records of pre 7 April 2000 fee-paid service. The JCT will reconcile this information with MOJ's own records and investigate any discrepancies. Once there is a final set of data for each claimant, the JCT will calculate their pension entitlement and offer a voluntary interim payment in lieu of pension.

#### Other Claimants - Miller

Where a claimant's fee-paid service was accrued over different appointments both pre and post 7 April 2000, whether the pre (and post) 7 April 2000 service should be credited for a pension remedy depends on whether the claim for such service is in time pursuant to the PTWR. The pending Miller appeal before the Supreme Court has been listed for 11 July 2019 to determine this.

15 March 2019