

Ministry of Justice Statement in Fee-paid Judicial Cases

Update No.3 (2019)

Overview

This update from the Ministry of Justice (MOJ) provides a further progress report on the work the department is doing to respond to the Court of Justice of the European Union's (CJEU) judgment in O'Brien on 7 November 2018, (O'Brien No.2) which deals with the question of pre 7 April 2000 fee-paid judicial service. The MOJ confirmed to the Employment Tribunal (ET) on 14 February that eligible claimants, who have already established a successful claim for a pension remedy in respect of a fee-paid appointment, would be entitled only to further *pension* remedy in respect of claimed pre 7 April 2000 service in that appointment.

This update should be read in conjunction with earlier communications published on the *GOV.UK* website:

- *Ministry of Justice statement in fee-paid judicial cases*, published 18 February 2019.
- *Ministry of Justice statement in fee-paid judicial litigation*, published 20 March 2019.

Since the last update to the ET, the department has focused on three key strands of work:

I. remedy design, and particularly an appraisal of the options for calculating pension entitlement for fee-paid service before 7 April 2000;

II. work to determine the records held by the MOJ and other relevant agencies on fee-paid service before 7 April 2000; and

III. creation of a new Judicial Claims Team (JCT) to process eligible claims.

I. Remedy Design

We are making good progress on developing a suitable remedy methodology. However, it has become clear that the question of how to calculate fee-paid service prior to 31 March 1995, i.e. before the Judicial Pensions and Retirement Act 1993 (JUPRA) scheme was implemented, is particularly complex. Unlike JUPRA, the Judicial Pensions Act 1981 scheme, was not designed to incorporate part time even for salaried judges. This has presented particular challenges with regard to determining a pro-rating method for fee paid claimants. We have therefore been working to conduct a detailed appraisal of the available calculation options, with a view to ensuring that we put eligible claimants in the position that they would have been in had they had the option of being members of the relevant judicial pension scheme at the time of their pre 7 April 2000 service. We are working towards a preferred option which we will outline to the ET in our next communication in early July.

II. Records of Fee-paid Service before 7 April 2000

We, in the MOJ, hold very limited data on pre 7 April 2000 fee-paid service owing to the length of time that has passed. The period of service in question ranges from 19 to more than 40 years ago, and we do not routinely hold financial data for more than seven years.

As part of work to provide a remedy for service from 7 April 2000 following the O'Brien ET judgment of August 2013 (O'Brien No.1), the MOJ sought all relevant data held by HMRC, HMCTS, Judicial College, Judicial Office and MOJ payroll administrators, among others. We are now replicating this approach to gather data relating to pre 7 April 2000 service from a range of sources, including HMRC, HMCTS, Judicial Office and other government departments. We will provide a progress report on this exercise in our July update.

III. Establishing the Judicial Claims Team

We are establishing a new Judicial Claims Team to handle the claims of eligible claimants. This team will be responsible for gathering relevant data, helping eligible claimants establish their pre 7 April 2000 service history, and calculating consequent pension entitlement once the remedy design process is finalised, and sufficient data is available.

We have been progressing work to establish the JCT as quickly as possible. We have been working across the department to recruit experienced staff to short timeframes, balancing the desire to do this at pace with the necessity of bringing in staff with the appropriate skills to deal with complex claims.

The senior management team is already in place, and team leader roles are confirmed and will be in post before the end of May. Case worker positions have also been advertised and recruitment is in train.

We are developing training, to be provided to staff once in post, to ensure that the JCT is equipped to process claims in an efficient, thorough and accurate manner. Staff will be required to process claims for a wide range of judicial office holders, whose salaried comparators would have been in a range of different judicial pension schemes, and deal with evidence going back decades.

Work is also under way to develop efficient processes for dealing with claims. We are working to develop calculation sheets and adapt processes used in O'Brien No.1. We are also in discussions with Punter Southall, the pension administrators for judicial pensions, to explore ways in which they may be able to assist us in managing the claims process.

Next Steps

In our next update to the ET in July, which will also be published on the GOV.UK website, we will provide information for eligible claimants on when and how to start submitting any relevant records they hold on their pre 7 April 2000 service, which we will use to supplement relevant data held by the department. Claimants should not submit their evidence before this point, as the MOJ will not be in a position to begin processing claims until the work outlined above has been completed.

In the meantime, claimants may wish to start collating their own evidence of their pre 7 April 2000 service ready for submitting it at the appropriate time. The list below outlines the types of documentation which will be accepted as supporting evidence:

- Copies of letters/e-mails from/to the court or tribunal that served as confirmations of sittings, training etc.
- Relevant copy extracts of personal/clerking diaries (manual diary & electronic diary) showing specific sitting days/training days/writing up activity.
- Copies of Payslips/P60s.
- Receipts for training activities/booking confirmations/copies of CPD training records.
- Statement of fitness to work/medical certificates.
- Bank statements with an explanation as to relevant credits/debits.

Owing to the expected volume and complexity of claims, and consistent with the approach we took in O'Brien No.1, the following evidence will not be accepted:

- Boxes of unsorted documents without an index or covering letter or explanation as to what the documents are and what they are supporting.
- Manuscript calculations and covering letters which are difficult to read.
- Unfiltered evidence e.g. copy sets of diaries with no indication as to where or what the team is to look for.
- Copies of written judgments. The team do not require a copy of each written judgment; however, a list of judgments with any relevant information would be useful.

It would be very helpful if claimants could submit evidence in digital form (e.g. as scanned copies of paper documents) to enable the JCT to process claims as swiftly as possible. Our next update to the ET in July will provide details of the JCT email inbox. We do, though, recognise that in some circumstances certain claimants will not be able to provide evidence in electronic form and so will also provide an address to which hard copy evidence can be sent. We ask that, in the interim, claimants do not send evidence to courts, MOJ HQ or other MOJ addresses. It will not be possible to return any hard copy evidence submitted to these addresses.

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