

## Ministry of Justice Statement in Fee-paid Judicial Cases

### Cover Note to Worked Examples Paper

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 of 7 November 2018 in O'Brien No.2, which deals with the question of pre 7 April 2000 fee-paid judicial service. It should be read in conjunction with earlier communications published on the *GOV.UK* website on 18 February<sup>1</sup>, 20 March<sup>2</sup>, 16 May<sup>3</sup> and 18 July<sup>4</sup> 2019. We will provide a further update on 17 October 2019.

### **Pension Calculation Methodology – Worked Examples**

In our last update, we described the methodology by which pension entitlement will be calculated for eligible judges. For those eligible fee-paid judges whose service began on or after 31 March 1995 (the implementation date of the Judicial Pensions and Retirement Act (JUPRA) scheme), we propose to extend the current provisions of the Fee-paid Judicial Pension Scheme (FPJPS). For eligible judges whose fee-paid service began before 31 March 1995, subject to the below on worked examples 5 and 6, we propose to give eligible judges a choice between a) having their pension entitlement based on the relevant scheme, or b) taking service credits in FPJPS, putting them as close as possible to the position they would have been in, had they been able to be members of the relevant scheme, and had that scheme made provision for part-time working.

We undertook to work with the Government Actuary's Department to develop worked examples, based on the above proposals, which aim to give a clearer indication of how these methodologies will work in practice for eligible judges who began their fee-paid service prior to 31 March 1995. The paper accompanying this note lays out six scenarios; these cover an example judge in each of three relevant pension schemes, with qualifying service above and below the cap for the relevant scheme.

Examples 1 to 4 relate to hypothetical fee-paid judges whose remedy is referable to the Judicial Pensions Act 1981. For each example, a table sets out what the fee-paid judge would presently receive for his or her service from 7 April 2000. The table then sets out three calculations for the total pension (including pre and post 7 April 2000 service), reflecting different pension options available to the example judge. In the same way, when calculating actual interim payments for individual fee-paid claimants in a like position, it is anticipated that the individual will be offered those three options.

Examples 5 and 6 relate to hypothetical fee-paid judges whose remedy pre 31 March 1995 is referable to a non-judicial pension scheme by analogy with the Principal Civil Service Pension Scheme. The calculations for interim payments in those examples are based on the same approach applied to fee-paid judges in the 'reason why/which pension' tribunals, consistent with lead case decisions in the litigation and statements in public consultation materials prior to FPJPS coming into force.

The scenarios in the attached paper are intended to be illustrative only, and should not be used as a 'scheme guide' for an amended FPJPS pension scheme. The interim payment offered to individuals will be a top-up payment taking into account pension payments already received for service from 7 April 2000.

### **Payments in Lieu of Pension**

We appreciate that eligible claimants, especially those who have already retired, may be anxious to receive pension entitlement for their pre 7 April 2000 service, in addition to that received for post 7 April 2000 service. As previously communicated, it is our intention to provide a permanent, statutory remedy; amending legislation is, however, complex and will necessarily take time.

In order to mitigate the impact of the time needed to draft legislation, we have committed to making interim payments in lieu of pension to eligible retired claimants, mirroring the approach taken in MOJ's response to the original O'Brien judgment in 2013. We have invited claimants to submit evidence of their pensionable

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<sup>1</sup> <https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-february-2019>

<sup>2</sup> <https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-march-2019>

<sup>3</sup> <https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-may-2019>

<sup>4</sup> <https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-july-2019>

service from 1 September 2019, and we aim to begin making payments later this calendar year. We will provide more information on the payments in lieu of pension process in our next update.