

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

### Update of 19 December 2019

This statement from the Ministry of Justice (MOJ) provides a further update on the work the department is doing to respond to the Court of Justice of the European Union's 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 previous communications published on the *GOV.UK* website, most recently on 16 October 2019, links to which can be found below.

The statement also sets out the department's initial response to the Miller judgment handed down by the Supreme Court on 16 December 2019.

#### **O'Brien No.2 – Progress report**

MOJ has begun making interim payments in lieu of pension to eligible retired O'Brien claimants for their pre 7 April 2000 service. We will continue to process payments for claimants after they agree their service records for the period in question with the department's Judicial Claims Team.

We will be making interim payments pending provision of a statutory remedy, which we intend to deliver by amending the Fee-Paid Judicial Pension Scheme (FPJPS). We aim to launch a formal consultation on the changes required to amend the scheme in the spring of 2020, and will provide further detail on timetable early next year.

#### **Miller**

In *Miller v MOJ* [2019] UKSC 60 the appellants were judges who held a range of concurrent or overlapping fee-paid judicial appointments or had a mixture of judicial service in fee-paid and salaried appointments. The Employment Tribunal originally held that the three-month time limit for claims under the Part Time Workers Regulations (PTWR) for a pension remedy in respect of their fee-paid service ran from the end of each fee-paid appointment rather than from retirement from judicial office. The Employment Appeals Tribunal and Court of Appeal maintained this judgment. However, the Supreme Court overturned it and confirmed that the time limit for fee-paid pension remedy claims under the PTWR for the appellants runs from retirement from judicial office when pension is payable.

We confirm, in light of the Supreme Court judgment, that MOJ accepts that judges in a like position to the Miller appellants, who are currently serving or who have retired from judicial service on or after 2 December 2012 (the date the MOJ moratorium came into effect) and are eligible for a pension, should have previous fee-paid service in overlapping or concurrent appointments included in their pension calculation. The inclusion of any such service is subject always to any applicable cap on accrual of pensionable service across the relevant salaried and fee-paid schemes (e.g. where aggregate pensionable service accrued across both JUPRA and FPJPS appointments exceeds the cap of 20 years, the excess fee-paid service beyond the cap is not credited).

We can further confirm that where interim payments have previously been provided which excluded fee-paid service as being out of time pursuant to the previous judgments in Miller, such payments will be recalculated to include service in fee-paid appointments which, pursuant to the Supreme Court's judgment, now falls to be remedied. Again, such calculations will be subject always to any applicable cap on accrual of pensionable service in a relevant scheme.

We will provide information on how this will work in practice in a further statement in January 2020.

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Previous MOJ statements on O'Brien No.2, from February 2019:

February 2019

[www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-february-2019](http://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-february-2019)

March 2019

[www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-march-2019](http://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-march-2019)

May 2019

[www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-may-2019](http://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-may-2019)

July 2019

[www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-july-2019](http://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-july-2019)

August 2019

[www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-august-2019](http://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-august-2019)

October 2019

[www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-october-2019](http://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-october-2019)