

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 17 October 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 earlier communications published on the *GOV.UK* website on 18 February¹, 20 March², 16 May³, 18 July⁴ and 30 August⁵ 2019.

Payments in Lieu of Pension

In our most recent update, on 30 August, we confirmed our intention of making interim payments in lieu of pension to eligible retired claimants, for their pre 7 April 2000 service, pending provision of a statutory remedy which is our preferred long-term solution. This mirrors the approach taken in MOJ's response to the original O'Brien judgment in 2013, for service from 7 April 2000, of first providing interim payments pending the introduction of the Fee Paid Judicial Pension Scheme from 1 April 2017.

The work required to make these interim payments is progressing well, with MOJ's Judicial Claims Teams and our third-party pensions' administrators working together closely to put in place a robust process. We expect to begin making payments before the end of the calendar year.

Building service records

Following our request that claimants submit evidence of their pre 7 April 2000 service, where available, we have received a number of submissions and the Judicial Claims Team is liaising with the claimants in question to build individual service records.

In parallel, we continue to seek sitting data held by MOJ and its agencies, as well other relevant government departments, including those departments that were once responsible for tribunals that subsequently transferred to MOJ. We continue to pursue all available avenues and are developing processes to ensure that we are able to supplement any data submitted by claimants with the available data held by government. However, as we have previously acknowledged, there are bound to be gaps in the evidence owing to the length of time that has passed and the fact that we do not routinely hold payroll data for more than seven years.

Where there is insufficient data on which to build a comprehensive service record for a claimant, we will build a record using a simple averaging approach, taking the average from available pensionable service history. This is consistent with the approach taken in response to the 2013 O'Brien judgment.

Addressing outstanding questions of methodology

In our July update we described the methodology by which pension entitlement will be calculated for eligible judges, and in our August update we provided worked examples, developed with the Government Actuary's Department, of how this would work in practice for those claimants whose fee-paid service began before 31 March 1995, i.e. the implementation date of the Judicial Pensions and Retirement Act scheme.

There are, however, some outstanding questions relating to the methodology, which will affect some but not all claimants – for example, any situations where a judge held more than one office introduces further complexities – and which we continue to work through with the Government Actuary's Department.

We will set out our proposed approach to these outstanding questions of methodology in our next update, by December, as well as providing a report of progress in making interim payments to eligible claimants.

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

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

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

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

⁵ <https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-august-2019>