

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 11 February 2022

This statement from the Ministry of Justice (MoJ) provides a further update on the work the department is doing to provide pension benefits to eligible judges for fee-paid service following the Court of Justice of the European Union's judgment of 7 November 2018 in *O'Brien No.2* and the Supreme Court's judgment in *Miller*, handed down on 16 December 2019.

It should be read in conjunction with previous communications published on the GOV.UK website, links to which can be found below.

Progress report on interim payments

The tables below show progress in processing claims and payments by both the MOJ Judicial Claims Team and by XPS, the scheme administrator.

In these tables we refer to 'records' rather than individuals, with a record relating to a pension entitlement associated with a judicial office. An individual might therefore have more than one record to be processed.

Table 1 – Processing of records by the MoJ Judicial Claims Team (JCT)

		30 Nov 21	31 Jan 22	Change
(1)	Estimated total number of claimant records	6,350	6,398	+48
(2)	Records assessed as ineligible/duplicate by JCT	954	1,009	+55
(3)	Estimated total number of valid claimant records to be processed	5,396	5,389	-7
(4)	Records agreed by JCT and sent to XPS	5,024	5,147	+123
(5)	Records not yet agreed by JCT	292	154	-138
(6)	Records finalised by JCT but not yet sent to XPS	80	88	+8
	Check total of rows (4), (5) and (6) to row (3)	5,396	5,389	

Notes for Table 1:

- (1) This is the current estimated total number of *O'Brien 2/Miller* claimant records and we do not expect this number to change significantly in future.
- (2) This is the number of records within the row (1) total that are found to be either ineligible, for example because they are out of time, or duplicate.

- (3) This is the total number of claimant records assessed as being eligible. It covers all outstanding claimants, including some *Miller* claims that might relate to service after 7 April 2000.
- (4) In processing claims, the JCT uses a prioritisation framework that takes account of retiree status and vulnerability factors.
- (5) The outstanding number of assessments that the JCT note as still to be completed
- (6) The number of active “which pension” records (relating to fee-paid offices for which there is no straightforward relationship with a relevant salaried office but which still qualify for a judicial pension). JCT have agreed sitting days with the office holder but the process for transferring these records to XPS, the scheme administrator is still being finalised. In the meantime, payments in lieu of pension are paid directly by MoJ.

Table 2 – Processing of records by the Scheme Administrator

		Total (12)			Net of cases from devolved governments		
		30 Nov 21	31 Jan 22	Change	30 Nov 21	31 Jan 22	Change
(7)	Active/deferred records processed by XPS in period	1,678	1,665	-13	1,657	1,641	-16
(8)	Records receiving interim payments via XPS	2,389	2,509	+120	2,358	2,478	+120
(9)	Records where queries pending with JCT, GAD or other.	774	727	-47	772	722	-50
(10)	Records where queries pending with members	8	3	-5	8	3	-5
(11)	Records pending completion with XPS	235	334	+99	229	303	+74
	Check total to row (4) in Table 1				5,024	5,147	

Notes for Table 2:

All records in Table 2 have had their sitting days agreed, with the exception of some early records which were passed to XPS but have since been identified as ineligible claims. We estimate approximately 200 records previously passed to XPS may be ineligible/duplicate.

- (7) Active records relate to individuals still holding the office concerned.

Deferred records relate to individuals who have left the office concerned but have not yet reached pension age.

The ineligible records identified to date have been categorised as completed actives pending a reconciliation of data between XPS and JCT once final calculations have been undertaken. The total active/deferred figures and the change in the period have been adjusted down to account for this.

(11) Records pending completion with XPS will include some active and deferred records.

(12) The table has been adjusted to show separately records received by the scheme administrator from JCT (as set out in row 4 of table 1), and those claims which have been received direct from the devolved governments. The difference in the 'Total' columns include those records received to date from the Scottish Government and Northern Ireland Executive.

PiLs Payments to Judges with eligible service before 31 March 1995 covered by '15-year' pension arrangements

The majority of judges in this category will already be in receipt of payments in lieu of pension, although for many judges the payment level will not fully reflect the formal entitlement they will have once the Fee-Paid Judicial Pension Scheme (FPJPS) regulations are amended in April 2023. GAD is working on an updated model which will be able to calculate the full entitlement for affected judges, including any arrears due. This is expected to be available in April 2022.

Provision of FPJAYS purchase opportunities

As referred to in our statement of August 2021, we have assessed the possibility of offering an interim FPJAYS (added years) purchase window to *Miller* claimants eligible for the current FJPS scheme in respect of eligible service on or after 7 April 2000. However, it has not proved practicable to do this and we will include these members in a comprehensive additional benefits review/purchase opportunity after the FPJPS amendment regulations come into force.

Next update

We will provide a further update on interim payments by 08 April 2022.

Previous MOJ statements on this subject can be accessed from the following web page:

<https://www.gov.uk/government/collections/ministry-of-justice-statements-in-fee-paid-judicial-litigation>