

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 10 June 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)

		31 Mar 22	26 May 22	Change
(1)	Estimated total number of claimant records	6,426	6,456	+30
(2)	Records assessed as ineligible/duplicate by JCT	1,012	1,026	+14
(3)	Estimated total number of valid claimant records to be processed	5,414	5,430	+16
(4)	Records agreed by JCT and sent to XPS	5,292	5,355	+63
(5)	Records not yet agreed by JCT	93	48	-45
(6)	Records finalised by JCT but not yet sent to XPS	29	27	-2
	Check total of rows (4), (5) and (6) to row (3)	5,414	5,430	

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, has now commenced. In the meantime, payments in lieu of pension are paid directly by XPS.

Table 2 – Processing of records by the Scheme Administrator

		Total (12)			Net of cases from devolved governments		
		31 Mar 22	26 May 22	Change	31 Mar 22	26 May 22	Change
(7)	Active/deferred records processed by XPS in period	1,757	1,753	-4	1,732	1,719	-13
(8)	Records receiving interim payments via XPS	2,546	2,626	+80	2,500	2,577	+77
(9)	Records where queries pending with JCT, GAD or other.	770	855	+85	765	849	+84
(10)	Records where queries pending with members	3	3	0	3	3	0
(11)	Records pending completion with XPS	332	298	-34	292	282	-10
	Check total to row (4) in Table 1				5,292	5,430	

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.

(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

In February 2022, we provided an update on the calculation of interim benefits for judges who have eligible service before 31 March 1995 that would have been subject to "15-year" pension arrangements.

We are still working on the details of the draft amendment regulations for the Fee-Paid Judicial Pension Scheme that will set out when pension benefits for a fee-paid office can be calculated under the 'pre-31 March 1995' provisions that will mirror those for relevant salaried judges under the judicial Pensions Act 1981.

At this stage, however, we have reached a view that where a judge was appointed to an eligible fee-paid office before 31 March 1995, and did not cease to hold that office before their retirement from all judicial offices, there will be an entitlement to pre-95 provisions for that office. In such cases we will update payments in lieu of pension (PiLs) to reflect the position as soon as possible.

As we confirm the full set of eligibility requirements for pre-95 provisions we will work with the Government Actuary's Department and the scheme administrators to apply them to updated PiLs ahead of amendments to FPJPS in April 2023. In the meantime, we will continue to calculate priority records on a case-by-case basis.

Next update

We will provide a further update on interim payments by 12 August 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>