

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 9 December 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 Sept 22	30 Nov 22	Change
(1)	Estimated total number of claimant records	6,469	6,484	+15
(2)	Records assessed as ineligible/duplicate by JCT	1,062	1,061	-1
(3)	Estimated total number of valid claimant records to be processed	5,407	5,423	+16
(4)	Records agreed by JCT and sent to XPS	5,403	5,419	+16
(5)	Records not yet agreed by JCT	4	4	+0
(6)	Records finalised by JCT but not yet sent to XPS	0	0	+0
	Check total of rows (4), (5) and (6) to row (3)	5,407	5,423	

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		
		30 Sept 22	30 Nov 22	Change	30 Sept 22	30 Nov 22	Change
(7)	Active/deferred records processed by XPS in period	1,704	1,660	-44	1,669	1,631	-38
(8)	Records receiving interim payments via XPS	2,801	2,853	+52	2,744	2,796	+52
(9)	Records where queries pending with JCT, GAD or other.	861	853	-8	852	844	-8
(10)	Records where queries pending with members	7	7	0	7	7	0
(11)	Records pending completion with XPS	143	155	+12	131	141	+10
	Check total to row (4) in Table 1				5,403	5,419	

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.

Update to GAD calculator tool

The draft amendment regulations to provide the remedy for the O'Brien 2/Miller litigation have recently been completed and, subject to Parliamentary process, will come into force on 1 April 2023. The FPJPS benefits calculation tool, provided to the scheme administrator by the Government Actuary's Department, has been updated to reflect provisions in the draft regulations, in particular with respect to:

- entitlements where a fee-paid office was first held before 31 March 1995; and
- refunding of excess member contributions where liabilities associated with a FPJPS entitlements displace more expensive JUPRA contribution liabilities under the 20 reckonable year aggregate cap.

We are now working with the FPJPS administrator to incorporate updated calculations into existing and new 'PiLs' (payment in lieu of pension) settlements, but we cannot say with certainty at this time when that process will be completed. We will provide further information in our next update in February 2023.

Next update

We will provide a further update on interim payments by 10 February 2023.

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>