

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

Update of 14 April 2023

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 Jan 23	31 Mar 23	Change
(1)	Estimated total number of claimant records	6,484	6,485	+1
(2)	Records assessed as ineligible/duplicate by JCT	1,056	1,055	-1
(3)	Estimated total number of valid claimant records to be processed	5,428	5,430	+2
(4)	Records agreed by JCT and sent to XPS	5,424	5,429	+5
(5)	Records not yet agreed by JCT	4	1	-3
(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)	5,428	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 Jan 23	31 Mar 23	Change	31 Jan 23	31 Mar 23	Change
(7)	Active/deferred records processed by XPS in period	1,666	1,629	-37	1,636	1,599	-37
(8)	Records receiving interim payments via XPS	2,933	3,014	+81	2,872	2,951	+79
(9)	Records where queries pending with JCT, GAD or other.	795	606	-189	786	599	-187
(10)	Records where queries pending with members	7	7	0	7	7	0
(11)	Records pending completion with XPS	137	287	+150	123	273	+150
	Check total to row (4) in Table 1				5,424	5,429	

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.

### **Additional Information**

The Judicial Pensions (Fee-Paid Judges) (Amendment) Regulations 2023 came into force on 1 April 2023. They amend The Judicial Pensions (Fee-Paid Judges) Regulations 2017 so that the Fee-Paid Judicial Pension Scheme now provides pension benefits in relation to eligible fee-paid judicial service before 7 April 2000. With a few exceptions this means that the system for payments in lieu of pension, put in place following the O'Brien litigation, has been superseded by formal entitlements for payment from the judicial pension scheme. In that context we propose that this will be the MoJ's last routine update to the Employment Tribunal on PiLs implementation. However, we stand ready to assist the Court as required.

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>