



This update, on behalf of the Ministry of Justice (MoJ), is made in response to decisions by the:

UK Supreme Court in **O'Brien v Ministry of Justice [2013] UKSC 6**
Employment Tribunal on 2 January 2014 in **Miller & Others v Ministry of Justice**
Employment Appeal Tribunal on 4 April 2014 in **Ministry of Justice v O'Brien**

The Employment Tribunal continues to hear preliminary hearings on related issues and there are appeals to the Employment Appeal Tribunal and Court of Appeal. However, the MoJ is aware that past and present fee-paid judicial office holders would like to know what steps are being taken in response to the judgments made so far.

This update should be read in conjunction with earlier communications entitled [Ministry of Justice statement in fee-paid judicial cases](#), published on 27 March and 17 June 2014.

Pension Entitlement

Interim Payment in Lieu of Fee-Paid Pension

The Lord Chancellor's statement of 31 May 2013 (as amended 18 November 2013) accepted that a number of fee-paid judicial office holders are entitled to a pension and other offices have been identified in the course of the litigation. The current list of eligible judicial offices is at annex A.

On 17 June 2014 an announcement on the MoJ website provided an update on progress in providing a fee-paid judicial pension scheme for fee-paid service from 7 April 2000 to 31 March 2015 and about fee-paid membership of the new judicial pension scheme 2015 that will replace the current Judicial Pensions and Retirement Act 1993 (JUPRA) scheme. The fee-paid scheme will be set up in the financial year 2015-16. In order to offset the delay for claimants who have already reached retirement, the MoJ has already offered to make interim payments in lieu of pension to Mr O'Brien and 98 other claimants who retired before 29 November 2013 and who had issued claims in time.

From 1 July 2014, the MoJ invites other eligible current and retired fee-paid judicial office holders in England & Wales, Scotland and Northern Ireland to apply for an interim payment.

Current and retired judicial office holders are eligible if:

- (i) they hold or held one of the eligible offices in the list at Annex A; and
- (ii) they satisfy any of the following three conditions:
 - (a) they retired before 2 December 2012 and presented a claim to the Tribunal within three months of the date of their appointment ending, which included a claim that they were entitled to a pension under the Part-

- time Worker (Prevention of Less Favourable Treatment) Regulations 2000; or
- (b) they retired on or after 2 December 2012; or
 - (c) they will retire before 31 March 2015.

If you are an eligible fee-paid judicial office holder and wish to receive an interim payment in lieu of pension, you should register your request with the Judicial Pay Claims (JPC) team by e-mail at JudicialPayClaims@justice.gsi.gov.uk.

You will be asked to submit a record of your pensionable service. The MoJ will notify you when we are ready to receive your records and where they should be sent. The MoJ will then use this information and its own records to calculate pension entitlement and to make an offer of an interim payment in lieu of pension, pending the operation of the fee-paid scheme. Based on our experience of the first tranche of voluntary payments, we expect to be able to make the first of these payments by 31 October 2014. Where a judicial office holder is still sitting but is due to retire before 31 March 2015, the payments will be made shortly after their retirement date.

Reflecting the approach taken with the recent interim payment offers the payments will be comprised of a lump sum element, together with a sum representing pension payments from the date of retirement up to and including March 2016, subject to any relevant deductions for tax as advised by HMRC.

Fee-paid judicial office holders who will not reach retirement age before the new fee-paid scheme comes into operation will have all of their eligible service taken into account in the fee-paid scheme when they are eligible to receive a pension. As these judicial office holders would not have received any pension payments before 31 March 2016 in any event, the MoJ is not offering to make an interim payment in these cases.

Pay Entitlements

Giving effect to the Judgments of the Employment Tribunal

On 27 March 2014, an announcement on the MoJ website set out the steps that we are taking to comply with the judgments of the Employment Tribunal in respect of the entitlement of fee-paid judicial office holders to a number of pay claims which were determined by the Employment Tribunal in *Miller v MoJ*, including establishing a Judicial Pay Claims team to enable claims to be made directly to the MoJ.

The MoJ is changing its policies to ensure that there is no on-going less favourable treatment in respect of the following:

- (1) From 1 July 2014 training fees for fee-paid offices in the list at Annex A will be increased to 100% of the daily rate.
- (2) From 1 August 2014 the daily fee rate will be re-calculated and applied using a divisor of 210 for Deputy/Retired High Court Judge, Deputy Bankruptcy Registrar, Recorders, Deputy Masters, Deputy Circuit Judges and Deputy Costs Judges. It will be 215 for Deputy District Judges.
- (3) From 1 August 2014, a new policy will provide for the payment of sick pay where:

- (i) a fee-paid judge is unwell and cancels a pre-booked day (that would not have been cancelled by MoJ for any other reason without payment of a cancellation fee), or;
 - (ii) the judge has in their terms of appointment a minimum number of sitting days and, due to sickness, has not been able to sit for that number of days in a sitting year.
- (4) From 1 September 2014, a system of pro rata payment for writing up statements of reasons will be introduced in the Social Entitlement Chamber.
- (5) From 1 September 2014, MoJ will pay a pro rata payment to fee-paid judges who meet the eligibility requirement for London weighting with regard to their principal place of work.

An announcement about annual leave and holiday pay was made on the Judicial Intranet on 23 June 2014 to all fee-paid judiciary, explaining that a pro rata allowance for annual leave and public and privilege holidays is built into the daily fee.

The MoJ already had corrected the shortfall of pay for SEC Judges and Employment judges, who have received the correct sitting fee (calculated as 1/220 of the full-time comparator's salary) from 1 April 2014 and 1 April 2013 respectively.

Compensation from 2 January 2014

All relevant fee-paid judicial office holders (including those who have not issued legal proceedings) have been eligible for payments under the above new policies from the date of the Miller judgment. It follows that some judicial office holders have been underpaid in the above respects since 2 January 2014. The MoJ will pay compensation in relation to these underpayments, including compensation of an interest-like nature. With very limited exceptions, these compensation payments will be made as of right and without the need for any individual to make a claim or to send the MoJ any information

The only exceptions are where an individual believes that they are entitled to any sick pay or holiday pay from 2 January 2014. The MoJ does not have all of the information needed to identify underpaid individuals, because the entitlement arises in the limited circumstances set out in the judgment in Miller v MoJ. The MoJ will provide further information on how any such individuals can request compensation shortly.

As there are a number of fee policies that are changing, and the changes will affect different groups of judicial office holders in different ways, MoJ officials will be working closely with the key stakeholders to try and ensure, as far as possible, that only one payment of compensation is made to everyone who is eligible to cover all aspects of the judgment. Work on this task has already started and is estimated to take up to 3 months from the date that the final policy changes are implemented on 1 September 2014.

Compensation from 7 April 2000 to 2 January 2014

Tribunal Claimants

Where a claimant has presented a pay claim in time, further to the Preliminary Hearing Order of 12 February 2014 they were requested to provide to TSOL the information which they hold in respect of the Miller pay claims i.e. training fee, divisor, the daily fee in the Employment Tribunal and Social Entitlement Chamber, the writing

up fee in the Social Entitlement Chamber, London weighting, sick pay and any working time claims (in the limited circumstances set out in Miller).

These directions apply to the following types of claim:

- The daily fee for Employment Tribunal Judges from 7 April 2000 to 31 March 2013;
- The daily fee for Social Entitlement Judges from 7 April 2000 to 31 March 2014;
- The divisor used to calculate the daily fees from 7 April 2000 to 1 January 2014 for Recorders, Deputy Masters, Deputy Circuit Judges, Deputy Costs Judges and Deputy District Judges;
- The training fee from 7 April 2000 to 1 January 2014 for any fee-paid office in the list at Annex A, with the exception of Judges and Valuer Chairs of the First-tier Tribunal (Property Chamber) (Residential Property) and their predecessor roles in RPTS. These residential property roles are excluded from this exercise because there is a further Tribunal hearing in October to determine the correct daily fee. The MoJ is waiting for the outcome of that judgment before determining any pay claims for residential property Judges or Valuer Chairs;
- London weighting from 7 April 2000 to 1 January 2014 if the claimant meets the eligibility requirement with regard to their principal place of work for any fee-paid office in the list at Annex A, with the exception of residential property Judges and Valuer Chairs;
- Sick pay from 7 April 2000 to 1 January 2014 (in the limited circumstances set out above) for any fee-paid office in the list at Annex A, with the exception of residential property Judges and Valuer Chairs;
- Annual leave from 7 April 2000 to 1 January 2014 (in the limited circumstances set out in the Miller judgment) for any fee-paid office in the list at Annex A, with the exception of residential property Judges and Valuer Chairs; and
- Writing up fees for Social Entitlement Judges from 7 April 2000 to 1 January 2014.

The MoJ will, by 26 September 2014, analyse the data submitted by Claimants and confirm, by way of list, which of the claims are, and are not, in dispute. The MoJ will prioritise consideration of the claims of those Claimants who lodged Tribunal claims prior to 2008 and/or who retired prior to 29 November 2013.

Non-claimants

Where fee-paid judicial office holders:

- (i) have not issued legal proceedings,
- (ii) consider that they meet the conditions set out in the Miller v MoJ judgment for any of the above categories of pay claim, in relation to a period prior to 2 January 2014, and
- (iii) either they are current judicial office holders or their appointment ended on or after 4 March 2013

then they should register any request for compensation by e-mail with the JPC team JudicialPayClaims@justice.gsi.gov.uk before 30 September 2014.

As set out above, some of the pay claims are limited to particular jurisdictions (such as writing up claims, which is limited to Social Entitlement Judges) whereas others (such as training day fees) can be made by in respect of any fee-paid office in the list at Annex A, with the exception of Judges and Valuer Chairs of the First-tier Tribunal (Property Chamber) (Residential Property) and their predecessor roles in RPTS. These residential property roles are excluded from this exercise because there is a further Tribunal hearing in October to determine the correct daily fee. The MoJ is waiting for the outcome of that judgment before determining any pay claims for residential property Judges or Valuer Chairs.

Having registered their request for compensation, they will be asked to check their records from 7 April 2000 (or from appointment if later) to 31 March 2007 (from which point the MoJ has relatively complete computer records). The MoJ will provide a pro forma claims spreadsheet to use for recording this and will notify them when we are ready to receive their records and where they should be sent.

The JPC team will gather all relevant data held by HMCTS, Judicial College, Judicial Office and MoJ payroll administrators, to reconcile it with fee-paid judges' records and to investigate any discrepancies. Once there is a final set of data, the JPC team will calculate individuals' entitlements and offer a settlement.

If you wish to contact the Ministry of Justice about this statement then please write to: JudicialPayClaims@justice.gsi.gov.uk.

Annex A

Fee-paid Judicial Offices eligible for a pension under the New Judicial Pension Scheme 2015 as at 1 July 2014

Lord Justice of Appeal (Sitting in Retirement)

High Court Judge (Sitting in Retirement)

Deputy High Court Judge

Deputy District Judge of the Principal Registry of the Family Division

Deputy Supreme Court Master/Registrar

Deputy Circuit Judge

Deputy Circuit Judge (Sitting in Retirement)

Recorder

Deputy District Judge

Deputy District Judge (Magistrates' Court)

Fee-paid Judge of the First-Tier War Pensions and Armed Forces Compensation
(Pensions Appeal Tribunal England & Wales)

Fee-paid Judge of the First-Tier Social Entitlement: Social Security and Child Support
(Appeal Tribunals; Child Support Commissioners; Protection of Children Act Tribunal)

Fee-paid Judge of the First-Tier Social Entitlement: Asylum Support (Asylum Support
Tribunal; Asylum Support Adjudicators)

Fee-paid Judge of the First-Tier Social Entitlement: Criminal Injuries Compensation
(Criminal Injuries Compensation Appeals Panel)

Fee-paid Judge of the First-Tier Health, Education and Social Care: Mental Health
(Mental Health Review Tribunal)

Fee-paid Judge of the First-Tier Health, Education and Social Care: Mental Health
(Restricted Patients Panel)

Fee-paid Judge of the First-Tier Health, Education and Social Care: Special
Educational Needs and Disability (Special Educational Needs and Disability Tribunal
SENDIST England; Special Needs Tribunal)

Fee-paid Judge of the First-Tier Health, Education and Social Care: Care Standards
(Care Standards Tribunal)

Fee-paid Judge of the First-Tier Health, Education and Social Care: Primary Health
Lists (Family Health Service Appeal Authority)

Fee-paid Judge of the First-Tier Tax Chamber

Fee-paid Immigration Judge of the First Tier Immigration and Asylum (Asylum and
Immigration Tribunal; Immigration Appellate Authority)

Judge (formerly Deputy Adjudicator to HM Land Registry) of the First-Tier, Property Chamber

Judge (formerly Legally Qualified Chair) of the First-Tier Property: Rent Assessment Committees

Member (formerly Valuer Chair) of the First-Tier Property: Residential Property Chamber

Judge (formerly Legally Qualified Chair) (Fee-Paid) of the First-Tier Property: Residential Property Chamber

Fee-paid Judge of the Employment Tribunal (England & Wales and Scotland)

Fee-paid Judge of the Employment Appeal Tribunal

Legal Member of the Special Immigration Appeals Commission

Chairman of the Competition Appeals Tribunal

Temporary Assistant Judge Advocate General

Fee-paid Judge of the Upper Tribunal