

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

### **Update of 31 January 2020**

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, most recently on 19 December 2019, links to which can be found below.

#### **O'Brien 2 Claims**

MOJ has begun making interim payments in lieu of pension to eligible retired O'Brien 2 claimants for their pre 7 April 2000 service. Our experience of making these payments is that agreeing with each claimant what their fee-paid service was 20, 30 or even 40 years ago is a time-consuming task for both claimants and MOJ. We estimate that there may be up to 1,800 O'Brien 2 claims.

Once accrued pensionable service in the relevant appointment has been agreed with a claimant, MOJ has been manually calculating and quality assuring payments. In parallel, with our pensions administrators and the Government Actuary's Department, we are working to automate this part of the calculation, where the methodology for calculation of an interim payment is settled and straightforward. This will improve the efficiency of the payment process. Once it is operational, we will be able to give clearer timings for processing claims. We aim to provide regular updates, with statistics on progress, once the automated process is in place. We will provide the first such update in March 2020.

#### **Miller Claims**

The MOJ statement on 19 December 2019 accepted that judges in a like position to the Miller appellants, who are currently serving or who have retired from judicial service on or after 2 December 2012 (the date the MOJ pension moratorium came into effect) and are eligible for a pension, should have previous fee-paid service in overlapping or concurrent appointments included in their reckonable service. As with O'Brien 2 claims, to mitigate delay, we will make interim payments in lieu of pension to eligible retired judges for their pre 7 April 2000 service pending provision of a statutory remedy. At this stage, we estimate that there may be around 2,500 Miller claims.

Miller claims will be managed by the Judicial Claims Team, put in place to manage O'Brien 2 claims. We have begun a process of expanding the team to deal with the increased workload. However, we are aware, given the additional complexities in service history for these individuals (e.g. a mixture of fee-paid and salaried appointments across a range of judicial offices with some appointments held concurrently and others consecutively), that calculating payments will be more challenging and time consuming.

Our first priority is to identify the judges in scope for remedy following the Miller judgment. We believe that these can be grouped as those who:

- (i) successfully claimed pension benefits for fee-paid service as a result of the O'Brien litigation and who have a claim for another fee-paid office;
- (ii) made claims which were rejected as out of time; and
- (iii) made no claims but are now eligible and in time, i.e. still in service or retired from 2 December 2012.

The Judicial Claims Team plans to contact judges in the first two groups, and we will make known the timetable for this in future updates. We are still working to establish the best way of identifying judges in the third group using the available data, but intend to seek to contact them where reasonably possible. We will provide a progress report in our March update.

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Previous MOJ statements on this subject:

February 2019

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-february-2019>

March 2019

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-march-2019>

May 2019

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-may-2019>

July 2019

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-july-2019>

August 2019

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-august-2019>

October 2019

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-october-2019>

December 2019

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-december-2019>