

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 8 April 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 31 January 2020, links to which can be found below.

O'Brien 2 Claims

The Judicial Claims Team (JCT) has been working with claimants to agree their service records. The process of 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. To date, we have agreed service records with around 475 judges, and this includes 282 retirees. This is against a total cohort of approximately 1,800 O'Brien 2 claimants of whom around 700 are retired.

We were in the process of expanding the JCT, looking to bring in additional staff in order to increase the number of claims being assessed. Unfortunately, this recruitment has had to be paused as a result of the current Covid-19 restrictions. We have therefore authorised overtime for existing JCT staff in order to increase the number of claims assessed while recruitment is on hold.

The process of calculating the appropriate interim payment once a record has been agreed has also proved very challenging, and we have not been able to make as many payments or issue as many options letters to claimants as we would have wanted. The main reasons for this are as follows:

- A substantial amount of data is required in respect of each calculation. For the most complex cases, over 850 separate data inputs are required, and even straightforward cases will require around 150 inputs. The service records that claimants agree with MOJ are only one part of the equation – this data comes from different sources and takes time to collect and verify.
- The calculations themselves are very complicated and time-consuming. The most complex require calculation of over 150 separate results. Even for more straightforward cases, results need to be provided for the new ongoing pension entitlement and the payments in lieu to be made in respect of pension arrears, lump sum arrears, arrears of service award, and interest – both separately and in aggregate – and the breakdown of these amounts into gross of tax, tax due and net of tax amounts. For judges who were appointed before 31 March 1995, a large number of results are required, so that the claimant can then be given a choice of the three options on offer (as set out in our update of 30 August 2019).
- We have had to consider how best to apply our calculation methodology to the particular circumstances of individual judges, taking account of such issues as how to deal with situations where a claimant held multiple offices. We plan to consult on our proposed approach to such questions later this spring but we have had to find a pragmatic way of dealing with them in the meantime, for the purpose of calculating interim payments. This has exacerbated the complexity of our work and resulted in further delay.

Given the complex nature of the calculations, it is important that we develop an automated process rather than trying to calculate the benefits owed to individual judges using a manual process. We commissioned the Government Actuary's Department to build a calculation tool which would enable automated bulk calculations. This tool was received on 31 March 2020 and should enable calculation in the majority of cases, allowing us to process calculations en bloc. We have also been working with the department's pensions and pay administrators to develop automated means of collating data. These automated systems are now largely complete and should ensure future payments can be processed more quickly.

As at 31 March 2020, however, we had made interim payments to just 35 claimants. This number is far lower than we would have wanted and we recognise the need for significant improvement. We

believe that the automated process, once fully operational, will allow us to achieve a substantial increase in the number of payments in the coming months. 282 of the 475 service records that have so far been agreed relate to retired claimants. We aim to have paid the majority of these by the end of May and will provide a progress report by 30 April.

To expedite payment, we will provide claimants whose fee-paid service began before 31 March 1995 with payment based on the calculation option that offers the highest amount. These claimants will then be presented with the options at a later stage and adjustment made to correct any over- or under-payment.

We will also look to take pragmatic decisions on outstanding questions of methodology, such as how best to calculate the pension benefits of multiple office holders. This will be done in the interests of speed and on the understanding that we will propose our preferred approach to such questions in our forthcoming consultation document. We will make clear to the claimant the basis on which the interim payment has been calculated.

Finally, we will in parallel continue to explore alternative options for making interim payments to ensure that we have the facility for increasing the number of payments made in the event that we encounter any further delay in mobilising the automated process.

Miller Claims

We are taking steps to identify all judges in scope of the Miller judgment, regardless of whether they have submitted a claim, using data from current and legacy IT systems. To date, we have identified just over 2,600 individuals. We continue to investigate, to ensure we correctly identify all judges entitled to benefit from the Miller ruling, and will seek to contact these individuals in due course.

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>

January 2020

<https://www.gov.uk/government/publications/ministry-of-justice-statement-in-fee-paid-judicial-litigation-february-2020>