

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 31 July 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, links to which can be found below.

Progress report on interim payments

Background

In our statement of 29 May 2020, we set out that there are approximately 1,800 O'Brien 2 claimants, of whom around 700 had retired. We confirmed that:

- there were 853 agreed service records of retired and non-retired claimants;
- we had agreed service records for 468 out of the 700 retirees; and
- we were making interim payments to 249 retirees, i.e. approximately 53% of the 468 retirees who had agreed their data.

We also said that we were receiving a significant number of claims from judges who now have in-time O'Brien claims following the Miller judgment.

Update on level of payments to retirees

As at 29 July 2020, we:

- had agreed 964 service records with retired and non-retired O'Brien 2 claimants;
- had agreed service records for 606 out of 800 retirees – the number of retirees having increased since the last update; and
- were making interim payments to 510 out of the 606 retirees who have agreed their service records, which equates to approximately 84%.

To ensure that the maximum number of payments were made as quickly as possible and given the complexity of the calculations, we had not provided breakdowns of the calculations alongside the payments. However, breakdowns will now be made available on request from XPS, the scheme administrators.

Update on Miller claims

Following on from MoJ's responses, on to the Claimants' outstanding (predominantly Miller) remedy queries sent to the ET on 1 May 2020, we started making some interim lump sum payments to Miller claimants from July. Monthly payments will commence in August 2020.

Communication with surviving spouses and civil partners

We will write to surviving spouses and civil partners of deceased judges where there is:

- an increased claim for pension benefits as a result of O'Brien 2; or
- a new claim for pension benefits as a result of Miller.

We expect to be able to write to all of the estates concerned by 14 August 2020. We are allocating priority group '2a' to payments for these claimants. This is our second highest priority group (retirees suffering ill health being the highest priority group).

Update on substantive remedy proposals

As stated in our last update, on 24 June 2020 we published a consultation on a substantive remedy for O'Brien 2 and Miller claimants. The consultation sets out our proposals to amend the Judicial Pensions (Fee-Paid Judges) Regulations 2017 to provide pension benefits and associated options for fee-paid service before 7 April 2000. The consultation is open until 18 September 2020.

As at 29 July 2020 we had received 11 responses. Several related to individual claim and eligibility queries under existing provisions, and we will contact the respondents to discuss these.

We have also separately published other consultations affecting the judiciary including one on judicial mandatory retirement age.

Next update

We propose to provide a further update on interim payments progress during August and September by 9 October 2020.

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>

8 April 2020

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

30 April 2020

<https://www.gov.uk/government/publications/ministry-of-justice-statements-in-fee-paid-judicial-litigation-30-april-2020>

29 May 2020

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

24 June 2020

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