

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 18 September 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 31 July 2020, we set out that, 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; and
- were making interim payments to 510 out of the 606 retirees who have agreed their service records (approximately 84%)¹.

In August, we shared with the Employment Tribunal a copy of the template letter that notifies claimants of their interim payments in lieu of pension. We have received representations about the template and are considering how we can improve the letter to explain how the interim payment has been calculated.

We also said that breakdowns of interim payments will be made available on request from XPS, the scheme administrators. The functionality for producing these tax year breakdowns is now almost complete and members who have requested these breakdowns will begin to receive them shortly.

Update on level of payments to retirees

As at 31 August we:

- had agreed 1,312 service records with retired and non-retired O'Brien 2 and Miller claimants;
- had agreed service records for 865 out of 1,030 retirees and dependants; and
- were making interim payments to 662 out of the 865 retirees and dependants where service records have been agreed (approximately 77%).

¹ We were making interim payments to 564 retirees by the end of the calendar month of July.

Information on fee rates applied to interim payment calculations for service before 7 April 2000

Fee rates are one of the components used to calculate interim payments. Specifically:

- (A) A fee rate on the day of retirement is typically used to calculate a member's pension entitlement at retirement; and
- (B) Fee rates are used to calculate the contribution deficit that a member would have paid, had a scheme been in place at the time;
- (C) Where there is an incomplete record or no record of a member's sitting days for pre-7 April 2000 service, then wherever possible the actual fee rates paid are used by the Judicial Claims Team to calculate the number of sitting days for the relevant period.

In (A), to make payments to eligible members as quickly as possible, we have been processing calculations using the fee rates that were agreed as part of the O'Brien 1 litigation, as these are known to be complete and accurate. These fee rates cover all offices and all years from 2000-01 onwards.

In (B), to calculate the contribution deficit, where we needed a fee rate for a period before 2000-01, to date we have been using the fee rate for 2000-01 as a proxy data input, as it is the closest agreed number.

The effect of this on interim payment calculations has been:

1. Pension entitlements at retirement should not be affected because they will typically be based on a final fee rate at retirement from 2000-01 on.
2. Contribution deficits, where they apply, will have been slightly overstated. This means that any interim payments that have been made to members who owed contributions (generally members who were married at some point during service) will have been slightly lower than if we had been able to use finalised fee rate information for years before 2000-01.
3. The impact on the amounts received by affected members will be small, because the only aspect of the calculations that is affected is the calculation of contribution deficits. This is because contribution deficits are a one-off payment owed to the scheme by the member (as opposed to a continuous stream of pension payments) and because contributions are typically due at the low rates of 1.8% or 2.4% of the daily fee-rate for each sitting day.

As we have been making interim payments, we have been going through historic records to compile a set of fee rates for the years before 2000-01. We have good records for the fee rates of the courts' judiciary and are still working on the fee rates of some tribunals, including tribunals that came to MoJ from other government departments.

This work is now nearing completion and we expect to begin using these updated fee rates to calculate the contribution deficit for all cases processed on or after 1 November 2020. At the same time, we will provide the Employment Tribunal with a set of these fee rates for the years before 2000-01. We will provide a further update if this timeline slips for any reason.

We continue to prioritise the commencement of new interim payments to the remaining claimants who are retirees. We expect to use the updated fee rates in early 2021 to recalculate entitlements for those claimants whose interim payments were processed before 1 November 2020, where fee rates for 2000-01 were applied to calculate their contribution deficit.

Next update

We will provide a further update on interim payments progress during September by 16 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>

31 July 2020

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