

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 18 Aug 2021

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

The tables below show progress in processing claims and payments by both the MOJ Judicial Claims Team and by XPS, the scheme administrator.

In these tables we refer to 'records' rather than individuals, with a record relating to a pension entitlement associated with a judicial office. An individual might therefore have more than one record to be processed.

Table 1 – Processing of records by the MoJ Judicial Claims Team (JCT)

		31 May 21	31 July 21	Change
(1)	Estimated total number of claimant records	6,194	6,262	+68
(2)	Records assessed as ineligible/duplicate by JCT	949	967	+18
(3)	Estimated total number of valid claimant records to be processed	5,245	5,295	+50
(4)	Records agreed by JCT and sent to XPS	4,194	4,708	+514
(5)	Records not yet agreed by JCT	1,051	587	-464
	Check total of rows (4) and (5) to row (3)	5,245	5,295	

Notes for Table 1:

- (1) This is the current estimated total number of *O'Brien 2/Miller* claimant records and we do not expect this number to change significantly in future.
- (2) This is the number of records within the row (1) total that are found to be either ineligible, for example because they are out of time, or duplicate.
- (3) This is the total number of claimant records assessed as being eligible. It covers all outstanding claimants, including some *Miller* claims that might relate to service after 7 April 2000.

- (4) In processing claims, the JCT uses a prioritisation framework that takes account of retiree status and vulnerability factors.

Table 2 – Processing of records by the Scheme Administrator

		31 May 21	31 July 21	Change
(6)	Active/deferred records processed by XPS in period	1,113	1,377	+264
(7)	Records receiving interim payments via XPS	1,881	2,136	+255
(8)	Records where queries pending with JCT, GAD or other.	529	681	+152
(9)	Records where queries pending with members	9	8	-1
(10)	Records pending completion with XPS	662	506	-156
	Check total to row (4) in Table 1	4,194	4,708	+514

Notes for Table 2:

All records in Table 2 have had their sitting days agreed.

(6) Active records relate to individuals still holding the office concerned.

Deferred records relate to individuals who have left the office concerned but have not yet reached pension age.

(10) Records pending completion with XPS will include some active and deferred records.

Compensation for Overpaid Pension Contributions

We are presently working on the approach needed to pay net refunds to judges where contributions due for service in FPJPS displace the liability for higher contributions already paid in respect of salaried service in JUPRA. In most cases the excess contribution position will formally arise when the *O'Brien 2* amendments to the Fee-Paid Judicial Pension Scheme (FPJPS) come into force on 1 April 2023. We have commenced the process for making payments in particular cases and we will put arrangements in place so that refunds can be paid to all judges due to receive them. We will write to retired judges affected by this issue shortly.

Other points

We are improving the calculator used for PiLs payments so that, where applicable, a multiplier of 1.25 can be applied to service used for pension calculations for judges appointed to a different judicial office after 31 March 1995. We will make retrospective uplifts to existing PiLs payments where applicable.

We are aware that a small number of claims were recently delayed by queries about in-time status when a just and equitable exemption applied. We have taken steps to ensure that these hold ups do not occur in future.

We will offer a further opportunity for 'added years' purchases before the amendments to FPJPS come into force in April 2023. We are aware that some *Miller* claimants with eligible

service after 6 April 2000 are ineligible to make purchases under the existing FPJPS regulations so we will ensure that a comprehensive review/purchase opportunity is offered to all eligible fee-paid judges after the amendments come into force.

Next update

We will provide a further update on interim payments by 8 October 2021.

Previous MOJ statements on this subject can be accessed from the following web page:

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