

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 10 December 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)

		30 Sept 21	30 Nov 21	Change
(1)	Estimated total number of claimant records	6,294	6,350	+56
(2)	Records assessed as ineligible/duplicate by JCT	939	954	+15
(3)	Estimated total number of valid claimant records to be processed	5,355	5,396	+41
(4)	Records agreed by JCT and sent to XPS	4,961	5,024	+63
(5)	Records not yet agreed by JCT	394	292	-102
(6)	Records finalised by JCT but not yet sent to XPS	N/A	80	+80
	Check total of rows (4), (5) and (6) to row (3)	5,355	5,396	

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.
- (5) The outstanding number of assessments that the JCT note as still to be completed
- (6) The number of active “which pension” records (relating to fee-paid offices for which there is no straightforward relationship with a relevant salaried office but which still qualify for a judicial pension). JCT have agreed sitting days with the office holder but the process for transferring these records to XPS, the scheme administrator is still being finalised. In the meantime, payments in lieu of pension are paid directly by MoJ.

Table 2 – Processing of records by the Scheme Administrator

		Total (12)			Net of cases from devolved governments	
		30 Sept 21	30 Nov 21	Change	30 Nov 21	Change
(7)	Active/deferred records processed by XPS in period	1,579	1,678	+99	1,657	+78
(8)	Records receiving interim payments via XPS	2,296	2,389	+93	2,358	+62
(9)	Records where queries pending with JCT, GAD or other.	725	774	+49	772	+47
(10)	Records where queries pending with members	8	8	-	8	-
(11)	Records pending completion with XPS	353	235	-118	229	-124
	Check total to row (4) in Table 1				5,024	

Notes for Table 2:

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

(7) 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.

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

(12) The table has been adjusted to show separately records received by the scheme administrator from JCT (as set out in row 4 of table 1), and those claims which have been received direct from the devolved governments. The difference in the 'Total' columns include those records received to date from the Scottish Government and Northern Ireland Executive.

Inclusion of 'Which Pension' data

Previous updates did not include data relating to the 'which pension' records referred to in note 6 above. We now include that data in row (6) of Table 1. Assessment of the records has been completed but they have not yet been passed to XPS. To date, payments in lieu of pension (PiLs) have been paid by MoJ; however, this is switching to payments by XPS in common with other PiLs payments from April 2022.

Inclusion of 'Total' XPS data

Previous updates had only included cases net of those received from the devolved governments, so that the data focused on what XPS were doing with the cases passed to them by JCT. We now show separately the records that have been passed to the scheme administrator by the Scottish and Northern Ireland devolved governments.

Comments on Records where Queries pending with JCT, GAD or other

The totals in row (9) of Table 2 include a significant number of cases where the settlement of pension benefits requires an additional calculation for a net refund of contributions to the office holder, driven by fee-paid service claims where contributions have also been paid under the JUPRA pension scheme for salaried judges.

Next update

We will provide a further update on interim payments by 11 February 2022.

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>