

Ministry of Justice Statement in Fee-paid Judicial Cases

Update of 12 August 2022

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)

		26 May 22	31 Jul 22	Change
(1)	Estimated total number of claimant records	6,456	6,464	+8
(2)	Records assessed as ineligible/duplicate by JCT	1,026	1,064	+38
(3)	Estimated total number of valid claimant records to be processed	5,430	5,400	-30
(4)	Records agreed by JCT and sent to XPS	5,355	5,384	+29
(5)	Records not yet agreed by JCT	48	16	-32
(6)	Records finalised by JCT but not yet sent to XPS	27	0	-27
	Check total of rows (4), (5) and (6) to row (3)	5,430	5,400	

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, has now commenced. In the meantime, payments in lieu of pension are paid directly by XPS.

Table 2 – Processing of records by the Scheme Administrator

		Total (12)			Net of cases from devolved governments		
		26 May 22	31 Jul 22	Change	26 May 22	31 Jul 22	Change
(7)	Active/deferred records processed by XPS in period	1,678	1,716	+38	1,644	1,684	+40
(8)	Records receiving interim payments via XPS	2,626	2,701	+75	2,577	2,647	+70
(9)	Records where queries pending with JCT, GAD or other.	855	866	+11	849	860	+11
(10)	Records where queries pending with members	3	5	+2	3	5	+2
(11)	Records pending completion with XPS	298	204	-94	282	188	-94
	Check total to row (4) in Table 1				5,355	5,384	

Notes for Table 2:

All records in Table 2 have had their sitting days agreed, with the exception of some early records which were passed to XPS but have since been identified as ineligible claims. We estimate approximately 200 records previously passed to XPS may be ineligible/duplicate.

- (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.

The ineligible records identified to date have been categorised as completed actives pending a reconciliation of data between XPS and JCT once final calculations have been undertaken.

- (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.

Figures provided in the previous update in row (7) and the "check total to row (4) in Table 1" contained some slight errors. These have now been corrected in the above table.

Update on Rules regarding change of Office.

In our last update we noted our view that where a judge was appointed to an eligible fee-paid office before 31 March 1995, and did not cease to hold that office before their retirement from all judicial offices, there will be an entitlement to pre-95 provisions for that office. We are now able to expand on that and set out that our proposals are:

1. A judge who has service in an eligible fee-paid office before 31 March 1995 retains an entitlement to have pension benefits in relation to that office calculated under pre-1995 (JPA81 mirroring) provisions unless they have a 'new appointment' after that date. The judge has a new appointment in relation to the first office upon appointment to another judicial office, or if after ceasing to hold the first office, they are appointed to another judicial office and in either case the other office is—
 - a. a salaried office; or
 - b. an eligible fee-paid office with a different pre-1995 judicial pension scheme.
2. If the judge does take up a 'new appointment', benefits for reckonable service in the first office will be calculated under the post-1995 (JUPRA mirroring) provisions.
3. Where paragraph 2 applies in respect of an office where the relevant salaried judge would have had a "15 year" pension arrangement under JPA81, a multiplier of 1.25 will be applied to reckonable service up to the effective date of transfer, which will usually be the date of appointment to the new office.

We consider that these proposals mirror, and are no less favourable than, the provisions that applied to relevant salaried judges when JUPRA came into force. They are also consistent with the high-level proposals we consulted on during 2020.

Next update

We will provide a further update on interim payments by 14 October 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>