



Ministry  
of Justice

The Right Honourable  
Lord Keen of Elie QC

**The Rt Hon. The Lord Adonis**

House of Lords  
London  
SW1A 0PW

MoJ ref: 66616

7 March 2019

Dear Andrew,

**DRAFT JUDICIAL PENSIONS AND FEE-PAID JUDGES' PENSION SCHEMES  
(AMENDMENT) REGULATIONS 2019**

I am writing to you following the debate in the House of Lords on 20 February regarding the draft Judicial Pensions and Fee-Paid Judges' (Amendment) Regulations 2019.

You asked about the costs associated with compensating loss in a judicial pensions dispute before the Court of Appeal, and whether the figure of £750m referred to by the Law Society Gazette was correct.

I note that the article in the Law Society Gazette published on 6 July 2018 refers to the estimated cost of £750m if the Ministry of Justice lost a dispute over pension provision for fee-paid part-time judges - *O'Brien v Ministry of Justice*. It also states that this estimated cost of providing additional pension entitlements to the claimants is outlined in the department's published annual report and accounts for 2017/18.

I can confirm that, in the case of *O'Brien*, the Government has accepted the Court of Justice of the European Union's judgment (7 November 2018) and we are considering how to implement it. In relation to this case, the Ministry of Justice accounts 2017-18 included a disclosure for a contingent liability of up to £750m to meet potential claims. This has been reviewed in light of the Court's judgment and our working estimate has been revised down to £270m. This is subject to further review and an updated figure will be included as a provision when we publish our next departmental accounts in summer.

In the separate case of *McCloud v Ministry of Justice*, about the lawfulness of transitional protection, the Government has sought permission from the Supreme Court to appeal the judgment of the Court of Appeal (20 December 2018). In the Ministry of Justice accounts 2017-18, the department said that it was unable to measure any potential financial liability. The financial liability in this case has now been reviewed in light of the Court of Appeal's judgment and the expected provision has also been estimated at £270m, with a final figure also to be published in the next departmental accounts as referred to above.

I am copying this letter to all Peers who spoke in the debate and will place a copy in the House library.

Yours sincerely,

**RT HON LORD KEEN OF ELIE QC**