

Equality and Human Rights Commission

How to work out the value of a discrimination claim

A guide to quantifying discrimination
claims in access to services cases

Context for this guide

The following guide aims to assist individuals in understanding how a county court in England or Wales is likely to quantify the amount a successful claim for discrimination is worth. This guide focuses on the discrimination people might experience in their day-to-day life, for example, when shopping, visiting a venue (like a theatre, restaurant or hotel) or similar (services cases). The same principles could be applied in other types of cases under the Equality Act 2010, such as premises or employment claims.

The general approach of the court

The amount a court awards depends on the facts and circumstances of each individual case, which the court will look at carefully.

While the facts of every case will be different, the principle that the court will apply in deciding the level of the award of damages is always the same: the court will try to put the claimant back into the same position (so far as is possible) as they would have been in had the discrimination not happened.

This will always include an amount of compensation for injury to feelings and may include any other financial loss encountered as a result of the discrimination in question, for example, where a wheelchair user is refused access onto a train and has to get on a later train travelling at peak times (and buy a peak-fare ticket), they would be entitled to an award for both injury to feelings and for the cost of the peak-fare ticket. In other cases the only award will be for injury to feelings, for example, where a shopkeeper refuses to serve someone because of their race. The aim is to compensate for genuinely injured feelings, not to punish the service provider.

Injury to feelings

The Vento scale

There is a lot of case law (previous decisions of the courts and tribunals) about the appropriate levels of injury to feelings. While there is no formal limit placed upon the amount a court can award, the senior appeal courts have set out a range of awards for injury to feelings called the '**Vento scale**' (**Vento** is the name of the case that established the scale).

The Vento scale has been changed on occasion to take into account the rate of inflation; the most recent change was made in March 2018. Currently, the three bands of award are as follows:

Lower band:

**£900 to
£8,600**

Middle band:

**£8,600 to
£25,700**

Higher band:

**£25,700 to
£42,900**

These bands will be reviewed again in March 2019 by the Presidents of the Employment Tribunal, and annually thereafter. Any new guidance will come into effect in respect of claims presented on or after 6 April in each year. You can check whether there is any new guidance on the **Courts and Tribunals Judiciary website**.

Which band of the Vento scale applies?

In the case of Vento, the Court of Appeal explained the differences between the three bands:

- The lower band applies to 'less serious cases' where the act of discrimination is a one-off or isolated occurrence.
- The middle band applies to serious cases that do not fall within the higher band.
- The higher band applies to the most serious cases, for example, where there has been a lengthy campaign of discrimination and/or harassment.

In most services cases, the discrimination is likely to be a one-off incident, and the award is likely to be in the lower band of £900 to £8,600. This band is broad, giving the court flexibility to fix the compensation at what is fair and just in each case. The court will consider all the evidence, including the claimant's evidence about the impact of the discrimination on them, before deciding an appropriate award within this band.

In the Scottish case of *Purves v Joydisc Ltd* [2003 SLT (Sh Ct) 64], the court considered an award of injury to feelings for a one-off incident. A blind man was told by his friend, who had been told over the telephone, that his guide dog would not be allowed into a restaurant. The court awarded £1,000 to the claimant and made the following comments:

- The discrimination will be considered less serious where it did not happen in a public place or in the presence of the disabled person (in this case he was told about it by a friend).
- An apology will usually be the most effective way of mitigating the seriousness of the discrimination. In the *Purves* case, no explanation or apology had ever been offered.
- The award is compensatory without being punitive; it bears a broad general similarity to the range of awards in personal injury cases.
- It should not be so low as to diminish respect for the policy of the legislation.

While the *Purves* case was specifically a disability case, and was decided before the *Vento* case, it remains a useful tool for quantification.

Awards for similar types of one-off discrimination claims that have been decided more recently have also been in the lower Vento band – for example, a court awarded a disabled woman £900 in 2016, after she was refused entry to a spa with her guide dog.

In the case of *Howe v JD Wetherspoon* [(2CL01225)], decided in 2015, a group who had attended the annual Irish Traveller Conference were all refused entry to the Wetherspoon's bar nearby. They succeeded in a race discrimination claim and the judge awarded them £3,000 each.

In reaching the figure of £3,000, the judge compared the treatment of the claimants in *Howe*, to the treatment of the claimant in *Kemeh v Ministry of Defence* ([2014] EWCA Civ 9). In the *Kemeh* case the Court of Appeal approved an award of £6,500 to the claimant who had been subjected to a single racial insult were there were aggravating features. The discrimination in the *Howe* case was also a single incident of race discrimination and the claimants were inconvenienced as a result, but there were no aggravating features and the judge concluded a lower award was appropriate.

What would justify a higher award?

While the court will assess the award of damages for injury to feelings in an objective way, the perception and the individual reaction of the claimant will be an important factor for the court to consider. The more upsetting the conduct is to the individual, the more seriously the discrimination is likely to be viewed by the court, and the higher the award for injury to feelings. Where a one-off act of discrimination is particularly humiliating or serious and the victim suffers serious consequences as a result, an award in the higher bands could be justified.

Usually, the court would require quite detailed evidence about the seriousness of the case before it would be prepared to award a substantially higher figure.

Examples might be:

- Where particularly rude or insensitive language is used by the discriminator.
- Where the discrimination happens in a public place in front of a number of members of the public, and so is more likely to be considered as humiliating.
- Where the matter relates to a private or intimate aspect of the victim's life, for example, the bowel habits of a disabled person with Crohn's disease, or matters relating to intimate aspects of the victim's sex life or parts of their body.
- Where the victim of discrimination becomes depressed or ill as a result of what happened.

In the 2009 case of *Allen v Royal Bank of Scotland* (7SE51122), Mr Allen was unable to use his local branch for a long time because it was inaccessible to him as a wheelchair user. He had been directed to alternative services and cash machines which he was unable to use, and had been served in the street. He was awarded £6,500 (well inside the

Vento middle band at that time) on the basis that the discrimination had been ongoing for a long time and had caused embarrassment.

While there are some examples of one-off incidents being viewed as serious enough to merit an award within the middle band of the Vento scale, previous decisions show that these tend to be employment cases, where there is a more detailed relationship than there is between customer and service provider. However, there is no rule that an award for injury to feelings in a services case can never be in a higher band. It will always depend on the facts and circumstances of each case.

How do you prove injury to feelings?

Conclusions that a court reaches in any case will be based on the evidence it sees and hears in the form of documents and/or witness evidence. In general terms, the court will have regard to the following matters when deciding the appropriate measure of damages to award:

- The seriousness of the discrimination itself. Relevant factors will include what was said or done, how it was said or done, whether in public or private.
- The evidence of the victim of discrimination, including the impact of the discrimination on them.
- Any medical evidence of the effect the discrimination had on the individual.

The evidence of the victim of discrimination

The evidence of the victim about the impact of the discrimination on their feelings and well-being is extremely important. Where a victim is able to give insight to the court about how their feelings were affected, this may be the basis for a higher award. Such insight might include:

- How the incident made the individual feel when it occurred and immediately afterwards.
- For how long it affected them.
- Whether it caused them to become upset about particular things as opposed to a general feeling of being upset or disappointed.
- Whether it stopped them from doing things that they might otherwise have done, and for how long.

Different people may be affected in different ways, and the court will take that into account, provided it is satisfied that the victim has not exaggerated their evidence.

Individuals may find it difficult to speak about their feelings, and the court should be sympathetic to that, but it is important to remember that the court can only make decisions on the evidence it has and cannot speculate about how the incident personally affected the individual. The true value of the case can only be decided by the court if it has as complete a picture as possible about the incident and its impact.

Medical evidence (where appropriate)

Generally, medical evidence is not necessary unless the victim developed symptoms as a result of the discrimination, such as depression; the individual will have the opportunity to tell the court directly about this. It will also help the court if it has supporting medical evidence; often this can simply be a letter from a GP detailing the individual's symptoms and medical treatment. Generally, the more serious the symptoms, the more evidence the court will want to have before it considers a more substantial amount of damages. Serious cases might require reports from the individual's specialist doctors or other health professionals, and these should detail any link between the symptoms and the act of discrimination itself.

Contacts

This publication and related equality and human rights resources are available from the Commission's website: www.equalityhumanrights.com

For advice, information or guidance on equality, discrimination or human rights issues, please contact the **Equality Advisory and Support Service**, a free and independent service.

Website	www.equalityadvisoryservice.com
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Questions and comments regarding this publication may be addressed to: correspondence@equalityhumanrights.com. The Commission welcomes your feedback.

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© 2018 Equality and Human Rights Commission

Published: April 2018

ISBN: 978-1-84206-721-5

You can download this publication from

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© 2018 Equality and Human Rights Commission

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