

# Damages for Unlawful Immigration Detention: Recent Cases

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## Structure

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## Substantial v Nominal Damages

- Nominal damages if would and could have been lawfully detained in any event: ***R (Lumba) v SSHD*** [2012] 1 AC 245 at [95]
- Balance of probabilities, not a test of inevitability: ***OM (Nigeria) v SSHD*** [2011] EWCA Civ 909 at [23]
- Burden of proof on the SSHD: ***R (EO) v SSHD*** [2013] EWHC 1236 (Admin) at [70]-[74]
- Recent cases:
  - ***R (Lauzika) v SSHD*** [2018] EWHC 1045 (Admin) (4 May 2018) at [64]
  - ***R (Belfken) v SSHD*** [2017] EWHC 1834 (Admin) at [67]-[72]
  - ***Onos v SSHD*** [2016] EWHC 59 (Admin) at [69]-[70]

## Compensatory Damages – the Heads of Loss

1. Basic award / general damages
2. Damages for personal injury
3. Adjustment for inflation and *Simmons v Castle*
4. Aggravated damages
5. Special damages (i.e. pecuniary losses)

## Exemplary damages

- Punitive rather than compensatory.
- Justified where compensatory damages (with or without aggravated damages) are “inadequate to punish [the defendant] for his outrageous conduct, to mark [the] disapproval of such conduct and to deter him from repeating it”: see ***Rookes v Barnard*** [1964] 1 AC 1129 at p.1228 and ***Muuse v SSHD*** [2010] EWCA Civ 453 at [70].
- A failure to give full and accurate information to the court in defence to a judicial review is one reason to merit exemplary damages: ***R (Santos) v SSHD*** [2016] EWHC 609.

## Human Rights Damages

- Section 8 of the Human Rights Act 1998. Sub-section (3):

*(3) No award of damages is to be made unless, taking account of all the circumstances of the case, including—*

*(a) any other relief or remedy granted, or order made, in relation to the act in question (by that or any other court), and*

*(b) the consequences of any decision (of that or any other court) in respect of that act, the court is satisfied that the award is necessary to afford just satisfaction to the person in whose favour it is made.*

## Older authorities

- ***Thompson v. Commissioner of Police for the Metropolis*** [1998] QB 498 (key authority on damages for false imprisonment – not immigration-specific).
- ***MK (Algeria) v. SSHD*** [2010] EWCA Civ 980 (useful summary of key principles at [8]).
- Two big awards:
  - ***Muuse v SSHD*** [2009] EWHC 1886 (QB)
  - ***R (B) v SSHD*** [2008] EWHC 3189 (Admin)
- ***R (NAB) v. SSHD*** [2011] EWHC 1191 (Admin) (where detainee does not co-operate with removal).

## Recent cases

1. ***Santos v SSHD*** [2016] EWHC 609 (Admin)
2. ***AXD v. Home Office*** [2016] EWHC 1617 (QB)
3. ***Temsely v SSHD*** (unrep. & no NCN)
4. ***Belfken v SSHD*** [2017] EWHC 1834 (Admin)
5. ***Sino v SSHD*** [2017] EWCA Civ 1975
6. ***Mohammed v SSHD*** [2017] EWHC 2809 (QB)
7. ***Sapkota v SSHD*** [2017] EWHC 2857 (Admin)

**For case summaries, see the paper accompanying these slides.**



## Santos v SSHD [2016] EWHC 609 (Admin)

- 154 days in unlawful detention
- General damages: £40,000
- Special damages: £6,578 (loss of earnings)
- Aggravated damages: £10,000 (*“the way in which the officers disregarded his repeated attempts to explain his legitimate status in the UK under EEA law, dismissing him as an immigration offender, was offensive and intensely humiliating”*)
- Exemplary damages: £10,000

## AXD v. Home Office [2016] EWHC 1617 (QB)



- Period of lawful detention of 16 months followed by a period of false imprisonment of 614 days, 2/3 of which was in the prison estate
- Basic award: £80,000
- Aggravated damages: £25,000
- Exemplary damages: None.



## Temseley v SSHD (unrep. & no NCN)

- False imprisonment for 17 days, the first 7 of which sounded in substantial damages
- Victim of torture
- Basic award: £8,500
- No aggravated or exemplary damages

## Belfken v SSHD [2017] EWHC 1834 (Admin)



- 295 days in unlawful detention
- Substantial damages awarded for whole period (despite C's unwillingness to be released until suitable bail accommodation provided)
- Not a “first shock” case
- No aggravating features
- A degree of non-cooperation with removal
- Basic award of £40,000

## Sino v SSHD [2017] EWCA Civ 1975

- Court of Appeal allowed an appeal against a summary assessment of £3,750 in damages for 150 days – due to procedural unfairness
- Quantum assessment remitted to the High Court, but judges did indicate the figure seemed “surprisingly low”.

## Mohammed v Home Office [2017] EWHC 2809 (QB)

- 3 separate periods of detention totalling 445 days (260 within prison)
- Torture victim and PTSD sufferer
- Judge had a “sense of unease” about possible political motivation to detention, but did not find any deliberate motive on part of the SSHD
- Obvious breaches of rule 35 procedure
- No initial shock
- Prison more restrictive environment than IRC
- Total award (relying mainly on **AXD**, inc basic and aggravated): £78,500
- Interesting postscript aimed at critics of judges who award damages to foreign criminals

## Sapkota v SSHD [2017] EWHC 2857 (Admin)



- 36 days unlawful detention
- Substantial damages for whole period
- Aggravating features relating to the circumstances of arrest and treatment in detention
- For the first 24 hours - £6,000 basic award and £5,000 aggravated damages
- Remaining 35 days: £12,000
- Special damages (loss of earnings): £658.63