

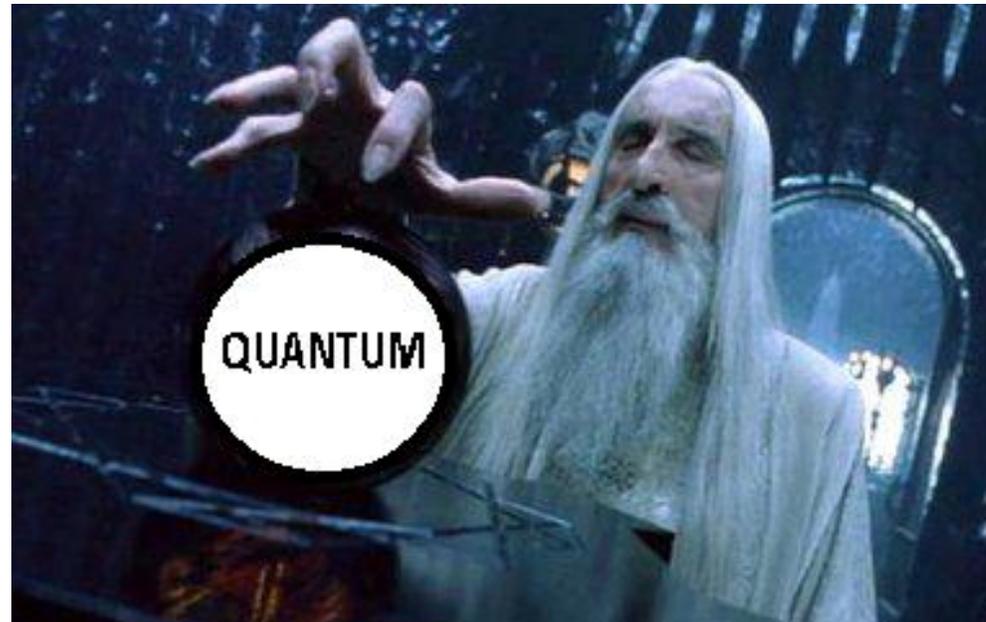
Unlawful detention damages

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Introduction

- Damages for unlawful detention arise under the tort of false imprisonment or under the Human Rights Act 1998
- Judges have a broad discretion in this area
- Predicting what a likely award of damages will be can be difficult



Damages generally

- Most common award of damages in civil claims is *compensatory*: false imprisonment no exception
- Purpose of the award is to place the claimant in a position as if the wrong had never happened: *Livingstone v Rawyards Coal Co* (1880) 5 App. Cas. 25
- Difficult when dealing with no tangible financial loss: a damages award is an imperfect solution
- Subject to causation and remoteness rules: but some of these are different in false imprisonment cases (see below)

Overarching principles

- Key case: *MK (Algeria) v Secretary of State for the Home Department* [2010] EWCA Civ 980
 - Award of damages fact sensitive
 - Damages should reflect the period of detention taken as a whole
 - Damages increase with the passage of time, but taper downwards
 - Any quantum of award made with reference to an earlier precedent should include an uplift to account for inflation
- See recent cases affirming these principles: *KG v Secretary of State for the Home Department* [2018] EWHC 3665 (Admin), para 30; *Diop v Secretary of State for the Home Department* [2018] EWHC 3420 (Admin), at para 28; and *Majewski v Secretary of State for the Home Department* [2019] EWHC 473 (Admin), para 11.

Basic damages

- Causation does not affect liability: but only nominal damages if C would have been detained anyway
- Loss of liberty is considered a freestanding loss
- Damages for shock, humiliation and loss of reputation depend on the claimant- likely to get a “shock uplift” for initial detention if no previous lawful detention. However someone who has been detained many times before, or immediately before the unlawful period of detention, may get little or no uplift
- Damages for psychiatric or physical injury arising from the false imprisonment in question can be claimed in principle: but need evidence (*R (Bent) v Secretary of State for the Home Department* [2012] EWHC 4036 (Admin))

Aggravated damages

- D acted in a high handed, insulting, malicious or oppressive manner (Denholm and Dunlop)
- Failure to comply with duty of candour
- Conduct of litigation (also relevant to costs)
- Some uncertainty regarding whether a judge will award aggravated damages or a higher basic award: however if there is a basis for asking for aggravated damages, no reason why you shouldn't
- Plead from the outset!

Special damages

- Damages for financial loss arising from the unlawful detention can be recovered
- E.g. loss of business, earnings, damaged property
- Losses must be caused by the unlawful detention
- Special damages must also be pleaded from the outset!

Exemplary damages

- Difficult but not impossible to obtain: ask yourself “is this a really, *really* bad case?”
- Purpose is to punish rather than compensate
- Accordingly conduct of the SOS must be particularly bad!
- Could include e.g. breach of duty of candour: *R (Santos) v SSHD* [2016] EWHC 609 (Admin)
- Exemplary damages generally not appropriate where a large number of unknown claimants, e.g. where an entire detention policy has been held to be unlawful: *Lumba*, para 167-168
- And again- must be pleaded from the outset!

Potential reductions in damages

- Conduct of C: including wilful non-cooperation and criminality (although query whether this should matter): *Mohammed v Home Office* [2017] EWHC 2809 (QB)
- Also query how the relevance of conduct interacts with the general bar on contributory negligence/ no requirement to mitigate loss: *R(NAB) v Secretary of State for the Home Department* [2011] EWHC 1191 (Admin) at para 17; *Diop v Secretary of State for the Home Department* [2018] EWHC 3420 (Admin) at paras 74-75.

Recent cases on quantum

Caveat: Jay J in *AXD v Home Office* [2016] EWHC 1133:

“The precedential effect of these comparable cases needs to be considered. In my judgement, these cases are illustrative only and should not be regarded as providing any clear framework, let alone any form of constraint. These cases are fact-sensitive and although consistency in judicial decision making is important, the evaluative exercise in this domain must be even less precise and even more of an art than in the realms, say, of personal injury damages.”

Don't forget 1) the tapering effect for longer periods and 2) inflation uplift!

Recent cases on quantum

AXD (2016)

- **Citation:** [2016] EWHC 1617 (QB).
- **Period of unlawful detention:** Detention between November 2011 and 31st March 2013.
- **Award:** basic £80,000: £25,000 aggravated damages: no uplift for initial shock.

Recent cases on quantum

Mohammed (2017)

- **Citation:** [2017] EWHC 2809 (QB)
- **Period of unlawful detention:** 41 days, 139 days, 265 days (445 total).
- **Award:** £8,500 for the first period of 41 days; £25,000 for the second period of 139 days; £45,000 for the third period of 265 days; making a total award of £78,500.

Recent cases on quantum

KG (2018)

- **Citation:** [2018] EWHC 3665 (Admin)
- **Period of unlawful detention:** 30 days.
- **Award:** £17,500 basic damages, £2,000 aggravated damages.

Recent cases on quantum

Diop (2018)

- **Citation:** [2018] EWHC 3420 (Admin)
- **Period of unlawful detention:** 28 days
- **Award:** £9,000 (plus interest at a rate of 8%).

Recent cases on quantum

Deptka (2019)

- **Citation:** [2019] EWHC 503 (Admin)
- **Period of unlawful detention:** 154 days
- **Award:** £35,000 each incorporating initial shock at £,5,000. Aggravated damages £8,500 each as the couple were separated for 4 weeks. No basis for an award for exemplary damages as no bad faith.

Recent cases on quantum

Majewski (2019)

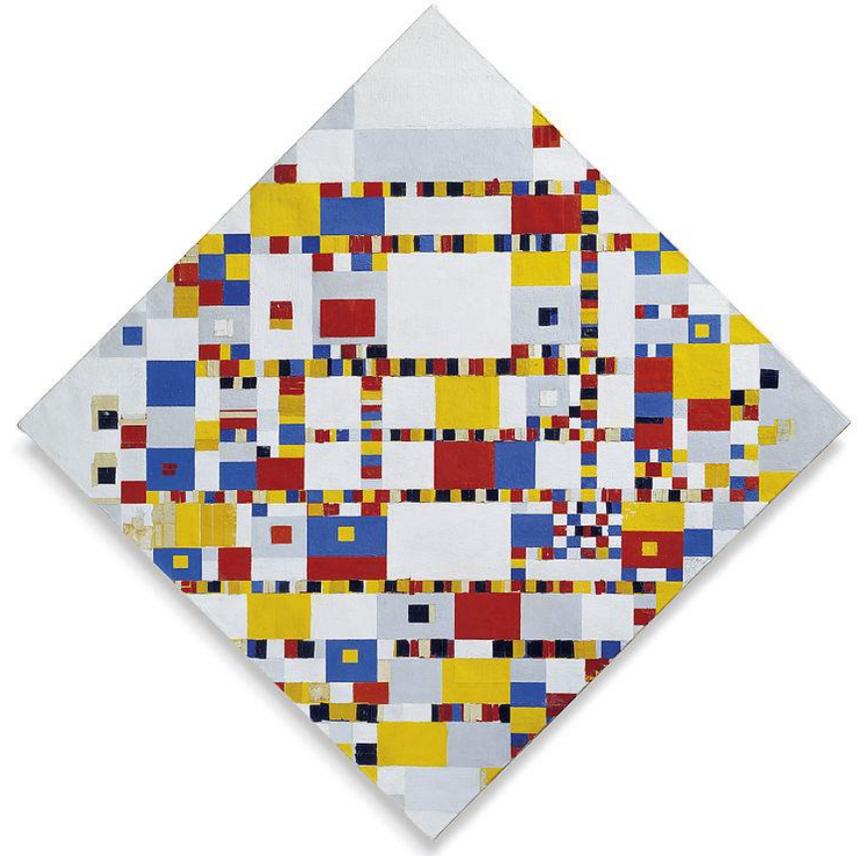
- **Citation:** [2019] EWHC 473 (Admin)
- **Period of unlawful detention:** 38 days
- **Award:** £6,400 for initial period, £8,400 for remainder of period (total £14,800). No basis for an award for aggravated damages as no evidence that the effects of detention on him were aggravated by his alcohol dependency.

Damages under the HRA 1998

- Damages for false imprisonment are the primary remedy: HRA damages only available if needed for “just satisfaction”
- The domestic courts should look to damages awarded by the ECtHR- but difficult to draw rules from awards of damages

Conclusion

- Like the artwork to the right, the law on unlawful detention damages is clearly incomplete and somewhat difficult to draw meaning from, yet it seems to work anyway
- Look out for the most up-to-date damages cases and especially those with similar facts
- Don't forget to plead specific heads of damage from the outset!



Thanks

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