

Damages for Unlawful Immigration Detention: Recent Cases

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Substantial v Nominal Damages

- Nominal damages if 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]
- “Would not could”: ***R (Sapkota) v SSHD*** [2017] EWHC 2857
- Damages to compensate Claimant, not disciplinary or vindictory vehicle to express a judge's disapproval of state action: ***R (Lauzikas) v SSHD*** [2019] 1 WLR 6625
- Supreme Court rejected argument that damages should be nominal in circumstances where detention would have been lawful if the law had been different: ***R (Hemmati) v SSHD*** [2019] 3 WLR 1156

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. ***Sino v SSHD*** [2017] EWCA Civ 1975
2. ***Mohammed v SSHD*** [2017] EWHC 2809 (QB)
3. ***Sapkota v SSHD*** [2017] EWHC 2857 (Admin)
4. ***Majewski v SSHD*** [2019] EWHC 473 (Admin)
5. ***Holownia v SSHD*** [2019] EWHC 794 (Admin)

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

Majewski v SSHD [2019] EWHC 473 (Admin)

- SSHD policy of deporting EEA nationals found sleeping rough
- Claimant apprehended and detained for 38 days pending removal
- Claimant had alcohol dependency
- For first 24 hours £6,400
- £8,400 for remainder of period.

Holownia v SSHD [2019] EWHC 794 (Admin)

- Another rough sleeper case
- 153 days in detention
- Claimant went on hunger strike during detention
- £6,000 for initial shock
- Aggravated damages for hunger strike: £5,000
- Total award £37,000
- Claim for exemplary damages (for pursuing unlawful policy) refused.

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