



11. Awards Compensation for Injury to Feelings

Injury to Feelings

Compensation is a financial remedy awarded to someone who has been discriminated against. In considering the compensation, the Tribunal will look at the damage caused by the discrimination. It will look at the following heads of damage:

1. what the injured person has already lost, and what they might lose or need in the future, and
2. how much they have suffered.

The compensation also recognises that awards cannot be based on pay in non-employment contexts.

Whilst the first head of damage above will include loss of income, earning capacity and out of pocket expenses the second is a general damage where it is not related to a financial loss, i.e., non-pecuniary damages. These have also been referred to as compensation for injury to feelings.

Compensation for injury to feelings is therefore for the pain and suffering that someone has experienced because of the discrimination. It is meant to compensate them for the physical, emotional, and psychological impact that the discrimination has had on their life, their loss of enjoyment, their hurt, humiliation, and distress.

Injury to feelings is not designed to punish the employer or person held liable for the discriminatory conduct but to compensate the person who has been discriminated against.

It should be noted that even if an individual has not suffered any financial loss an award for injury to feelings, can still be made.

The sum awarded should not be so high that it amounts to a windfall nor should it be so low that it diminishes respect for the legislation. The figure of a maximum of £10K was therefore a compromise between these two aims, following extensive consultation by the Committee for Employment and Social Security (ESS). The Ordinance seeks to balance the need to provide effective, proportionate and dissuasive sanctions and the desire to ensure legislation is light-touch, in the first instance, and focused on promoting cultural change.

To assist the Tribunal in assessing the amount of compensation for injury to feelings the ESS will provide a scale in a regulation. This scale will be based on the Vento scale used in the UK as follows:

- The lower band which is appropriate for less serious cases such as where the act of discrimination is an isolated or one-off occurrence.
- The middle band for serious cases which do not merit an award in the highest band.
- The top band for the most serious cases such as where there has been a lengthy campaign of discriminatory harassment.

For more information see sheet 10 Awards - Amount of Compensation and sheet 9 Awards - Comparisons with Other Jurisdictions

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The draft Prevention of Discrimination Ordinance (Guernsey) 2022 can be found on the States of Guernsey website:

www.gov.gg/article/190813/The-Prevention-of-Discrimination-Guernsey-Ordinance-2022

For more information on Discrimination Legislation and FAQ's

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