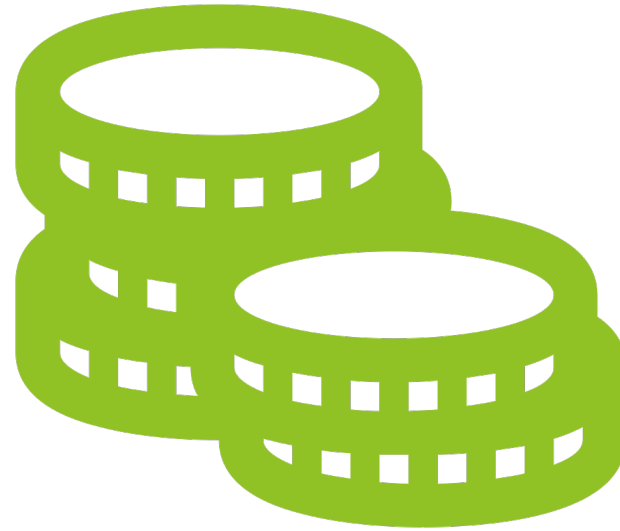




University of Strathclyde
LAW CLINIC



11A Financial Remedies in Discrimination Cases

A guide for the general public

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Introduction

When completing the ET1 and the agenda for a preliminary hearing you will be asked for the value of your claim, or to state what compensation you think you are due. The aim of financial compensation is to put you in the position you would have been in had the discrimination never occurred.

There are several different elements to loss. Financial compensation in discrimination cases will always include injury to feelings and may include psychiatric injury as well as actual losses. What you include in valuing your claim will depend on the specific facts of your case.

Solicitors and Tribunal judges often refer to a Schedule of Loss- meaning a document setting out the financial compensation that a Claimant thinks they are due.

Injury to feelings

An award for injury to feelings is to compensate for the hurt and distress you have suffered as a result of the discrimination. It is to compensate for genuinely injured feelings, not to punish the employer. A financial award for injury to feelings will be determined based on what are called 'Vento bands'. There are three bands.

- ▶ Lower: £900-£9000
- ▶ Middle: £9000-£27000
- ▶ Upper: £27000-£45000
- ▶ In the most exceptional circumstances more than £45000.

Where your case should be valued within this table will depend on a number of factors, including: **whether the discrimination was deliberate or accidental; how serious the discrimination was; how long it lasted; how your employer behaved after the discrimination; the effect on you; whether you needed to see your GP as a result of the discrimination.**

Lower band £900-£9,000

The lower band is for 'less serious cases' where the act of discrimination is a one-off or isolated occurrence.

Case law suggests that discrimination is likely to sit in this band where it did not happen in a public place or in the presence of the Claimant.

Middle band £9,000-£27,000

Applies to serious cases that do not fall under the upper band.

Upper band £27,000-£45,000

The upper band applies to the most serious cases, for example, where there has been a lengthy campaign of deliberate discrimination and/or harassment.

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 band could be justified.

In the most exceptional cases (and this will be very rare) there can be an award of over £45,000.

Psychiatric injury (1)

Where the level of hurt and distress that has been caused by the discrimination can be shown to have had a serious impact on the Claimant's mental health, then it may also be possible to ask for psychiatric injury.

This is a term from personal injury cases which requires a person's mental health to have been damaged by the treatment the person has received.

To claim financial compensation for psychiatric injury you would need to prove that the psychiatric injury was directly caused by your employer's actions. This can mean that a new mental health condition has developed or that an existing mental health condition has been exacerbated.

Psychiatric injury (2)

Evidence of this could include medical reports from your GP, consultant or a psychiatrist that link your psychiatric injury to your employer's actions.

It will usually be necessary to get specialist evidence to establish the impact and that the impact is linked to the treatment.

Awards for psychiatric injury are assessed in accordance with the Judicial Studies Board guidelines (10th Edition) for the assessment of general damages in personal injury cases, specifically psychiatric injury. You may find a table about this by searching online.

Actual losses (1)

Actual losses refers to any quantifiable loss you can directly link to the acts of discrimination. Actual losses vary on a case to case basis. In some cases, there may be no actual losses to claim for. Particularly if you are complaining of discrimination but still in employment.

In other cases, there may be a significant sum of actual losses. One example would be if your employer failed to make reasonable adjustments and as a direct result, you had to step down a pay grade. Or if you had to leave your job because you could not continue to work without the reasonable adjustments or were dismissed because you could not get back to work without the reasonable adjustments.

Actual losses (2)

A claim for actual losses in this situation would be a claim for the difference between what you earned in your original role and the salary paid in the role you were forced to accept due to the failure to make reasonable adjustments.

Or the loss of earnings from losing your job, subject to mitigating your loss, for a period, until you found new alternative employment.

Example of schedule of loss

If you are making a claim for unfair dismissal as well as disability discrimination, the first few sections of the schedule should set out how you have calculated the compensation for unfair dismissal. This calculation can be complicated. [The website of the Citizen's Advice Bureau](#) provides information about calculating loss in an unfair dismissal claim. It also discusses compensation in a claim of both discrimination and unfair dismissal. There is a link to an example of a schedule of loss which does not include compensation for injury to feelings but is a useful template to help understand the different types of loss and how to set these out. Remember to add a claim for injury to feelings.