



Law Society
of Scotland

Consultation Response

Employment Tribunal awards for injury to feelings
and psychiatric injury following *De Souza v Vinci
Construction (UK) Ltd*

25 August 2017



Introduction

The Law Society of Scotland is the professional body for over 11,000 Scottish solicitors. With our overarching objective of leading legal excellence, we strive to excel and to be a world-class professional body, understanding and serving the needs of our members and the public. We set and uphold standards to ensure the provision of excellent legal services and ensure the public can have confidence in Scotland's solicitor profession.

We have a statutory duty to work in the public interest, a duty which we are strongly committed to achieving through our work to promote a strong, varied and effective solicitor profession working in the interests of the public and protecting and promoting the rule of law. We seek to influence the creation of a fairer and more just society through our active engagement with the Scottish and United Kingdom Governments, Parliaments, wider stakeholders and our membership.

The Society's Employment Law Sub-committee welcomes the opportunity to consider and respond to the judicial consultation: Employment Tribunal awards for injury to feelings and psychiatric injury following *De Souza v Vinci Construction (UK) Ltd*. The Sub-committee has the following comments to put forward for consideration.

Do you consider that RPI is the appropriate index in connection with up rating of awards? If not, please explain why you disagree.

We consider RPI is the appropriate index in connection with up rating of awards as it is the measure used by the Judicial College and to uprate sums payable for other employment tribunal claims.

We also recommend that, regardless of inflation based changes in the Vento scale, that efforts are taken to ensure that the scale does not become divorced from the underlying and robust assessment of the value of injury of comparable Personal Injury claims where the solatium element of the award (general damages as they are known in England) for personal injury cases broadly reflect the figures published annually by (what is now) the Judicial College (and formerly the Judicial Studies Board) Guidelines for the Assessment of General Damages in Personal Injury cases, presently in its 14th edition. These guidelines are updated by a working party of the Judicial College on an annual basis review of actual cases and subject in Scotland to review by juries of comparable injury claims, provide a useful and robust assessment of value of such injury element of claims.

Do you agree with the proposed approach to uprating of the Vento bands? If not, please explain why you disagree.

Whilst we agree with the proposed approach to uprating of the Vento bands as set out in paragraph 12 there is, we consider, a fundamental problem with applying that approach in Scotland given that in Scotland Employment Tribunals only have power (see Section 124(6) of the Equality Act 2010) to make awards for compensation that correspond to awards that could be made by the Sheriff Court. If the 10 %

uplift does not apply in the Sheriff Court we do not believe that it can apply in Scottish Employment Tribunals. This may be unfortunate as there are, in our view, good policy reasons why the position in Scotland should match that in England and Wales. Firstly, employment law is a reserved function and we consider employment tribunals in Scotland and in England and Wales should seek to adopt a common approach to awards to compensation, unless there are very strong reasons for not doing so. Secondly, if awards of compensation are lower in Scotland than in England and Wales, this may encourage claimants to raise proceedings in England. We consider it is better if the system operates in such a way as to minimise the perceived need on the part of claimants in Scotland raise proceedings in England. Thirdly, the fixing of awards in Scotland for personal injury and injury to feelings in claims of discrimination at a lower level than those in England and Wales may be viewed as an unwillingness on the part of the Scottish system to treat these claims as seriously as they are treated in England and Wales. This would be unfortunate.

For further information, please contact:

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