

### 28.12 *Basic principles*

*R v Islam* 2013 EWCA Crim 2355 The general rule is that compensation orders should not affect the punishment appropriately imposed for the offence. For more details of the case see 28.39.

### 28.15 *Defendants are not able to buy shorter sentences*

*R v Islam* 2013 EWCA Crim 2355 D, a doctor, was convicted of numerous indecent assaults. The Judge made compensation orders totalling £38,250. para 33 The defence said the Judge in fixing the prison term had failed to take into account the compensations he made on a later occasion. It was accepted that D had means to pay. Held. The general rule is that compensation orders should not affect the punishment appropriately imposed for the offence. Defendants cannot, as it were, buy their way out of an appropriate custodial sentence.

### 28.39 *Personal injury awards*                      *Approach and quantum*

*R v Islam* 2013 EWCA Crim 2355 D was convicted of numerous indecent assaults committed between the 1970s and 1990s. He was a doctor and the victims were six female patients aged 13 to mid-20s, and one practice nurse. D preyed on their vulnerability. A 13 or 14-year-old patient visited him having found a lump in her breast and concerned she might have cancer. D used that opportunity to examine her breasts and her vagina. In another, D asked a young woman to see him about a receptionist position. He told her to 'get down', placed his penis in her mouth and ejaculated. He assaulted another young woman aged 14-22 under the guise of performing medical examinations. He touched her breasts and vagina, made lewd remarks and put her hand on his erect penis. The Judge found that substantial psychological problems had been caused by D to his victims. There were no Victim Impact Statements and no psychiatric evidence and the Judge commented that he had formed his own judgement from the victims' evidence. He made Compensation Orders totalling £38,250, acknowledging that some victims must have had degrees of psychological problems prior to D's offences. It was accepted that D had means. Held. The real point is whether the Judge had sufficient material before him to make the order. First, it is well-established that in principle Compensation Orders should not be made without a proper evidential basis. If there is such a basis, a judge is then certainly able to apply his general knowledge and experience, and to have regard to any relevant guidelines on damages or compensation, in fixing an appropriate sum to be paid by a defendant as compensation, having due regard to his means. A Judge cannot, as it were, simply pluck a figure out of the air. In this case, the Judge had no real evidential basis for assessing the extent of the psychiatric injury (assuming there was such psychiatric injury) caused by D's criminal offending. The Judge was not in a position to make a finding as he did that 'substantial psychological problems' had been caused, in whole or in part, by D's conduct. There were potentially difficult issues of causation and quantification not amenable to the essentially summary procedure appropriate for making compensation awards at the Crown Court. The orders had to be set aside. Such matters are best left to civil proceedings or compensation applications to the CICA.

### 28.56 *Promise of money in the future*

*R v Carrington* 2014 EWCA 325, 2 Cr App R (S) 41 (p 337) D pleaded to fraud and other charges. At work she made false claims for overtime and petty cash. In all she obtained just under £50,000. Counsel said D was keen to pay the money back as soon as possible. He suggested a £10,000 or £15,000 compensation order based on D and her partner borrowing money. He also said, "Courts really cannot

take into account monies that other people are borrowing or monies that they would lend". In fact D was now unemployed, on a very modest pension and relying financially on her partner. With her good character, age etc. the Judge made a suspended sentence order with a £15,000 compensation order. Held. Counsel's statement was not entirely accurate. [Where] the cash flow position of a defendant is not such as to equip him to make an immediate payment for a compensation order, then [funds may be borrowed]. If a judge has sufficient material to conclude that there were sound prospects that a defendant would be able to repay [such a loan] then a compensation order would not be wrong in principle. However in this case there was no such material. Order quashed.

#### **28.69 *Complicated factual backgrounds***

*R v Islam* 2013 EWCA Crim 2355 (Historic sexual abuse with seven victims. Compensation orders should be confined to relatively straightforward cases. Orders quashed. See 28.39)

#### **28.75 *Confiscation orders, Combined with***

*R v Firmager* 2013 EWCA Crim 2756 D was sentenced to 15 months' imprisonment and a compensation order. He appealed before the confiscation hearing. Held. The compensation order was unlawful because it was premature. Order quashed.

#### **28.79 *Imprisonment etc., Combined with***

*R v Islam* 2013 EWCA Crim 2355 D was convicted of numerous indecent assaults committed between the 1970s and 1990s. Held. It was accepted that D had means. The fact that a defendant has been sentenced to a substantial custodial sentence is not necessarily a bar in itself to the court also making a Compensation Order in an appropriate case, see *R v Martin* 1989 11 Cr App R (S) 424. The argument that because of the 11-year sentence imposed on D, the Judge was wrong to make a Compensation Order at all, cannot succeed.