

CRIME AND COURTS ACT 2013

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 2: Courts and Justice

Section 35: Relevant considerations

474. **Section 35** gives the court detailed guidance about particular factors to take into account in deciding whether to award exemplary damages. Under *subsection (2)* the court should not usually award exemplary damages if a defendant has already been punished in relation to the same conduct through a criminal conviction. *Subsection (3)* provides that the court should also take account of whether the defendant could have joined a regulatory scheme and if they did not, the reasons for that decision. In addition, under *subsections (3) and (4)* the court should consider whether, irrespective of regulatory scheme membership, the defendant had satisfactory internal compliance procedures in place in relation to how material is obtained and the circumstances in which it is published, and adhered to them. *Subsection (5)* provides that the court may have regard to the need for deterrence – both of the defendant and others. The provisions of *subsection (6)* make clear, notwithstanding these specific directions, that the court has a general discretion to look at all relevant circumstances.