

Psychiatric injury, bad faith, and boardroom conduct

Briefing Summary: This briefing looks at the Royal Court of Jersey's decision in *MacLeod v The Channel Islands Co-operative Society Limited* [2025] JRC 321.

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Introduction

On 16 December 2025, the Royal Court of Jersey handed down a significant judgment in *MacLeod v The Channel Islands Cooperative Society Limited* [2025] JRC 321.

The case (which we understand that the defendant intends to appeal) addresses the liability of an employer for psychiatric injury suffered by a senior executive, the standards of boardroom conduct and the boundaries of employer duty of care under Jersey law.

Factual background

The Plaintiff ("CM") was a long-serving CEO and director of the Channel Islands Co-operative Society Limited ("the Co-op"). From 2017 onwards, relations within the Co-op's board deteriorated, culminating in what the court found to be a campaign by certain board members (primarily members of its remuneration committee ("Remco")) to remove CM from his position. This included secret meetings, targeted audits and a "bad faith" approach to board governance.

In May 2019, following a particularly hostile board meeting, CM suffered a psychiatric injury (diagnosed as a prolonged adjustment disorder) and was signed off work. His employment was later terminated and he brought proceedings for damages for personal injury, alleging breach of statutory, contractual, and common law duties of care.

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Key legal issues

The court considered a number of factors including:

- Whether the Co-op, through its board and RemCo, breached its duty of care to CM causing him foreseeable psychiatric injury.
- The relevance of “bad faith” conduct by directors.
- The relevance of English authorities relating to psychiatric personal injury in assisting with understanding the Jersey law position.
- The extent to which damages for psychiatric injury are recoverable where the injury is linked to the manner of dismissal.

The Royal Court held as follows:

1. Bad faith and boardroom conduct

The court found that from February 2019, certain RemCo members acted in bad faith, orchestrating a campaign to remove CM without justification. This conduct included a number of elements, including but not limited to engaging in secret communications and meetings, targeted audits, a failure to follow grievance procedures and ensuring a hostile board environment.

The court adopted a broad definition of “bad faith”, drawing on Jersey’s own *Hard Rock Limited v HRCKY* [2023] JRC 169 which had considered English authorities such as *Yam Seng v International Trading Corp* [2013] EWHC 111 (QB).

Bad faith in this context was held to include not only dishonest conduct but also conduct that – as the Royal Court held in this case – is “improper, commercially unacceptable or unconscionable.”

This finding was crucial to the overall finding of liability (see below).

2. Breach of duty of care

The Co-op, through the combined actions of certain directors and the failure of the President to intervene, was found to have breached its duty of care, owed to CM, to protect CM from foreseeable psychiatric harm. The court held that the employer’s duty extended to protecting employees—even senior executives—from foreseeable psychiatric harm caused by unreasonable workplace pressures and boardroom conduct.

3. Foreseeability

While no one foresaw CM’s imminent breakdown, the court held that the campaign against him was such that psychiatric injury was reasonably foreseeable, even in a robust individual. The court emphasised that in exceptional cases, conduct can be so extreme that injury is foreseeable even without prior signs of vulnerability.

4. Dismissal and damages

Jersey law reflects the English position relation to injury to feelings and other claims arising from the manner of dismissal.

The law in this area is complex but in summary:

- An employer owes no common-law (or customary law) duty of care to avoid causing an employee psychiatric or other injury in the manner of dismissal.
- Therefore, an employee generally cannot claim damages for the way in which they were dismissed (e.g., distress, procedural unfairness).

This principle was established in two House of Lords decisions: *Johnson v Unisys Ltd* [2001] IRLR 279 HL and *Eastwood v Magnox Electric* [2004] IRLR 733 and has become known as the "Johnson exclusion zone" – the reasoning being that the government had specifically provided a limited remedy for unfair dismissal and it would be wrong to allow employees to get round the limit by pursuing an uncapped breach of contract or negligence claim instead.

The key exception to this rule is where the employee's cause of action accrues before the dismissal decision. In such cases, the claim does not fall within the Johnson exclusion zone and can proceed in negligence or contract.

The court in this case considered that CM's cause of action had accrued prior to dismissal and therefore he was not within the Johnson exclusion zone.

Key takeaways

- "Bad faith" may be a broader concept in Jersey than previously thought: the judgment appears to extend what was understood to be the scope of the implied duty of good faith – which has significant potential implications in the contexts of board behaviour and in the employment context.
- A reminder of the duty of care owed by employers to employees: employers owe a duty to protect all employees, including senior executives, from foreseeable injury – both physical and psychiatric harm. This duty is not limited to physical safety but also extends to psychiatric well-being of employees.
- Proper handling of grievances: grievances, especially those involving senior staff or directors, must be handled transparently, promptly, and in accordance with policy and law.
- Get the right advice at the right time: it is vital that employers take legal, HR and medical advice at appropriate times and that they ensure that they understand how and when communications may be privileged (and when they may not be).
- Investigations matter: workplace investigations (whether internal or external) need to be carefully scoped and undertaken and appropriate in all the circumstances.
- Liabilities may not be limited: employees are generally limited in terms of the damages which they can claim in selection to the manner of their dismissal to the statutory remedies which are set out in law (such as unfair dismissal). However, exceptions exist where (as here) an employer's wrongful conduct occurs prior to dismissal. Where personal injury is caused by pre-dismissal conduct, damages may be recoverable at common/customary law, notwithstanding statutory limits on unfair dismissal claims.

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