



## Jersey protects financial institutions reporting suspicions

Service area / [Dispute Resolution and Litigation](#)

Location / [Jersey](#)

Date / [September 2019](#)

In [Verga v Nedbank](#), Mr V. claimed that the bank defamed or otherwise wronged him in the course of reporting various matters to the Police. The Police then initiated an investigation which resulted in criminal proceedings being brought in which Mr. V was ultimately found not guilty.

The Royal Court struck out Mr V's claims on the basis that the bank could claim immunity from suit and also that the claim was time barred.

This is a case of real importance and relevance to all individuals and entities working in the regulated sector in Jersey. It shows that if regulated businesses comply with their duties, then the law will protect them.

### Decision

The Royal Court confirmed the wide scope of the statutory immunity from suit conferred by Article 32 of the Proceeds of Crime (Jersey) Law 1999 ("POCL"). This is relevant where an internal referral or suspicious activity report is made to an "appropriate person" within a business, such as a Money Laundering Reporting Officer, or where an external referral or Suspicious Activity Report is made to a police officer. The Royal Court rejected Mr V's argument that the Article 32 immunity is subject to a duty to act in good faith and upon which there would need to be a trial to establish facts. The Royal Court preferred the bank's contention that the good faith requirement only applies in relation to a person taking any steps to deal with the potential proceeds of crime and does not apply to the decision to report in the first place. Accordingly, there was no need for a trial to establish the bank's good faith.

Also of interest to the regulated sector in Jersey was the finding that regulated businesses, such as banks, owe no general duty of care to the public at large, in particular in respect of their Customer Due Diligence obligations. The decision confirms that these duties are regulatory duties, aimed at protecting the reputation of the Island and giving rise to criminal consequences if they are not followed. Those duties do not render a regulated business liable to any person on the civil basis.

The decision confirms the existence of the defence of absolute privilege from suit in defamation for words spoken to the police, in legal proceedings or written in witness statements and thus the applicability of the doctrine of legal proceedings immunity generally in Jersey. That doctrine provides confirmation for persons involved in giving evidence in legal proceedings in Jersey that they will not (subject to very limited narrow exceptions) be subject to "flank attack" from persons referred to within the evidence via expensive and time consuming civil proceedings. The "core immunity" is to be interpreted narrowly to cover solely the giving of evidence and therefore does not extend to gratuitous comments or insults. The Royal Court also ruled that absolute immunity also does not apply to actions for malicious prosecution, albeit no such claim was pleaded in this case and the elements of that tort could not be made out on the facts in any event.

In relation to the law of banking generally, the Royal Court held that a bank does not owe a duty of care to a customer in relation to that customer's decision to open a bank account. Rather, the duty only arises to operate the mandate properly once a banker and customer relationship is created.

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## Conclusion

It is clear following this decision that the statutory immunity in Article 32 of POCL provides a powerful exoneration from liability in tort, contract or otherwise in cases where it is engaged. In confirming that the statute is to be interpreted literally, the decision provides a degree of reassurance to any person in the position of filing a Suspicious Activity Report or otherwise reporting suspicions to the police.

Witness testimony has hitherto been provided in Jersey on the assumption that relevant immunities from suit in relation to that testimony apply, but now there is judicial authority confirming this to be the case.

*Advocates Marcus Pallot and Oliver Lindop acted for the Defendants.*



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