

UPDATE

## 'Contractually fettered' right to terminate leads to uncapped damages in Jersey

Update prepared by Carla Benest (Partner) and Laurie Child (Senior Associate)

The Royal Court in Jersey has found that a senior doctor who was dismissed before he started work is entitled to damages in excess of the statutory cap for unfair dismissal, because his employer's right to terminate his employment was 'contractually fettered'

The judgment, *Alwitry v The States Employment Board*, has significant implications for Jersey employers in counting the cost of dismissing a senior employee.

- Dr Alwitry is a consultant doctor whose employment was terminated shortly before he was due to start work, but after his contract of employment had been agreed.
- The contract, which incorporated collectively negotiated terms and conditions for medical staff, expressly limited the employer's right to terminate Dr Alwitry's employment.
- His dismissal, following discussions with Dr Alwitry regarding his working arrangements, was held by the Royal Court to be 'without cause' because it did not fall within the express termination powers permitted by the contract.
- As a termination without cause, the Royal Court found this case was not covered by the well-established principle that the civil courts should defer to the statutory unfair dismissal regime and usually limit compensation to the period of notice that should have been given.
- Compensation for statutory unfair dismissal in Jersey is currently capped at a maximum of 26 weeks' pay.
- Based on those findings, the Royal Court went on to decide that it would be wrong to limit Dr Alwitry's compensation to the period of his contractual notice only, and that he is entitled to uncapped damages for the loss of his employment.

It is unusual for a contract of employment to prescribe an employer's right to terminate as narrowly as in this case. Yet the important question this judgment now poses for Jersey employers is whether your powers to carry out a dismissal have, even inadvertently, been 'contractually fettered'.

If so, it is now clear that the financial consequences are likely to go significantly beyond the constraints of Jersey's unfair dismissal regime.

This judgment is also a reminder that alongside discrimination and victimisation considerations, an employer's contractual obligations to new recruits – and the associated financial liabilities – can be triggered long before the first working day.

To discuss any of these issues, please contact Carla Benest, Jessica Roland or Laurie Child.

Please also see [here](#) for a previous report on an earlier judgment concerning Dr Alwitry relating to Data Subject Access Requests. (Note that this preceded the introduction of Jersey's GDPR framework in 2018, but the points of general application remain relevant.)

## Contacts

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