

## House of Lords: Employee tainted by association with dishonest employer can sue for "stigma" damages

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If a business is run in a corrupt or dishonest manner, and its employees are consequently stigmatized and hindered in their search for new employment, can they recover damages for any losses suffered? In *Malik v. Bank of Credit and Commerce International SA* (June 12, 1997), the House of Lords, Britain's highest court, has said they can.

The case arose when the Bank collapsed in 1991, causing thousands to lose their savings and jobs. Two employees dismissed by the Bank's liquidators claimed that their association with the Bank had hampered their efforts to find new jobs and pressed for damages. The liquidators responded that no damages could be recovered for loss of reputation arising out of a breach of contract, a position that was affirmed when the case reached the Court of Appeal.

However, the House of Lords held that the employees' claim for stigma damages could proceed to trial. The case was decided on the assumption that all the facts alleged by the employees were true, including their personal innocence, the corruption of the Bank, and their losses suffered as a result of being associated with the Bank.

The parties agreed that there was an implied term in the employment contract that the employer would not, without reasonable and proper cause, engage in conduct likely to undermine the mutual trust and confidence between it and its employees. The House of Lords held that running a corrupt or dishonest business breached this obligation and the employees should be able to recover any losses they could prove they had suffered as a result of the breach.

But the liquidators argued that the purpose of this implied term was to preserve the employment relationship itself. Therefore, any damages recoverable from breaching the term should be confined to those flowing from the premature termination of the relationship.

Lord Nicholls held that this was too narrow a view. While there may be no obligation on employers to improve the future job prospects of their employees, that did not mean they could cause positive damage to those prospects:

"Employment, and job prospects, are matters of vital concern to most people. Jobs of all descriptions are less secure than formerly. ... An employment contract creates a close personal relationship, where there is often a disparity of power between the parties. Frequently the employee is vulnerable. Although the underlying purpose of the trust and confidence term is to protect the employment relationship, there can be nothing unfairly onerous or unreasonable in requiring an employer who breaches the trust and confidence term to be liable if he thereby causes

continuing financial loss of a nature that was reasonably foreseeable."

Lord Nicholls also denied that allowing a claim in contract would improperly "side-step" the law of defamation:

"If a breach of contract gives rise to financial loss which on ordinary principles would be recoverable as damages for breach of contract, those damages do not cease to be recoverable because they might also be recoverable in a defamation action."

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