

# Director and officers: Scope of duty

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## How the court will assess compliance with directors' duties in smaller companies

In **Humphrey v Bennett [2023] EWCA Civ 1433** the Claimants were the minority shareholders of a company and brought a derivative action against the Defendants, the majority shareholders, for allegedly diverting a business opportunity away from the company to different company connected to the Defendants.

The Court of Appeal was required to consider the duty to avoid conflicts of interest (s175 of the Companies Act), the duty to declare an interest in transactions (s175) and the relief that is available to a director that has breached its duties but acted honestly and reasonably (s1157)

The Court at first instance had found against the First Defendant for failing to disclose sufficient information about the transaction and refused relief under 1157 noting that to do so would require an 'extremely powerful case'.

The Court of Appeal allowed the appeal holding that the first instance judge had applied too high a standard of disclosure on the First Defendant.

The scope of what was required to be disclosed was lesser in the context of a small and informally run company that did not follow the strict procedures, such as recording decisions at board meetings.

Similarly, the Court of Appeal found that the judge had erred in finding that an 'extremely powerful case' was required for relief under s 1157. The informality of the company was capable of affecting whether or not the First Defendant had acted reasonably.

## Compensation orders against directors

In the case of **Secretary of State for Business and Trade v Barnsby (Re Pure Zanzibar Ltd), [2023] EWHC 2284 (Ch)** the High Court confirmed that compensation orders against disqualified directors made under section 15A of the Company Directors Disqualification Act 1986 (CDDA) were not limited to cases of fraud and could also be made in cases of reckless and incompetent misconduct which results in a quantifiable loss.

Mr Barnsby was the sole director of Pure Zanzibar Limited (Zanzibar), which provided safari holidays to Africa. Mr Barnsby had failed to renew the Air Travel Organiser's Licence (ATOL) due to financial difficulties. He continued to take bookings and payments using the ATOL logo, suggesting that his customers would be ATOL protected. Zanzibar went into liquidation and its customers were unable to receive a refund.

In only the second case of its kind, the judge held that the conduct of the director had put customer's money at significant risk and caused quantifiable loss to the customer's concerned and the court's discretion should be used to make a compensation order against Mr Barnsby.

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