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**IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION**

**Cause No.: G 0155 of 2017  
Legal Aid No. LACR/0162/2015**

**BETWEEN**

**OSBOURNE DOUGLAS**

**Plaintiff**

**And**

**(1) THE GOVERNOR OF THE CAYMAN ISLANDS  
(2) THE DIRECTOR OF PRISONS**

**Respondents**

**AND IN THE MATTER:**

**Cause No.: G 0164 of 2017  
Legal Aid No. LACV/0225/2017**

**BETWEEN**

**JUSTIN RAMOON**

**Plaintiff**

**And**

**(1) THE GOVERNOR OF THE CAYMAN ISLANDS  
(2) THE DIRECTOR OF PRISONS  
(3) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**

**Respondents**

**IN OPEN COURT**

**Appearances:**

**Mr. Paul Bowen QC, instructed by Ms. Reshma  
Sharma, Solicitor General and Ms. Claire Allen,  
Crown Counsel for the Respondents**



**Mr. Hugh Southey QC, instructed by Mr. Laurence  
Aiolfi, of Priestleys for the Plaintiff Douglas and Mrs.  
Prathna Boddan of Samson Law Associates for the  
Plaintiff Ramoon**

**Special Advocate, Mr. Ashley Underwood QC**

**Before:**

**Justice Marlene I. Carter Actg.**

**Heard:**

**2<sup>nd</sup> – 4<sup>th</sup> December 2019**

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*

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**HEADNOTE**

*Civil Division -Preliminary Issues - Plaintiffs’ Application to Join the Secretary of State for Foreign and Commonwealth Affairs as a Party to the Proceedings – Respondents’ Applications for Court to adopt a Closed Material Procedure – Appointment of a Special Advocate*

**JUDGMENT**



1     **Introduction**

2     1.     The Plaintiffs have been granted leave to file for judicial review against the decision of the  
3           First Respondent to order their transfer from Her Majesty’s Prison Service (HMPS)  
4           Northward, Grand Cayman to Her Majesty’s Prison Belmarsh, (“HMP Belmarsh”), England.  
5           The Plaintiffs seek an Order of certiorari and various declarations that the decision was in  
6           breach of their rights under the Constitution.<sup>1</sup>

7  
8     2.     This hearing was set to address further preliminary issues.

9  
10    3.     The first issue before the Court was the Plaintiffs’ application to join the Secretary of State  
11           for Foreign and Commonwealth Affairs as a party to the proceedings. Queen’s Counsel Mr.  
12           Steven Kovats appeared instructed by Mr. Michael Wingrave for the Secretary of State. The  
13           Court was informed by Counsel for the Plaintiffs at the outset of the hearing that, after  
14           discussion with Mr. Kovats Q.C., the application for joinder was to be withdrawn. After  
15           confirmation from Mr. Kovats, leave was granted for the application to be withdrawn. The  
16           Secretary of State did not take any further part in these proceedings.



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<sup>1</sup> The nature of the relief sought in the consolidated claim: “1. *An Order Certiorari quashing any decision by the Respondents to transfer and/or consent to the transfer of the Applicant from HMP Northward, Grand Cayman to HMP Belmarsh, England.* 2. *A Declaration that any decision to transfer and/or consent to the transfer of the Applicant to HMP Belmarsh, England was in breach of section 9(1) of Schedule 2 of the Constitution of the Cayman Islands Part 1: The Bill of Rights, Freedoms and Responsibilities (‘the Bill of Rights’).* 3. *A Declaration that the continued detention of the Applicant at HMP Belmarsh, England is in breach of section 9(1) of the Bill of Rights.* 4. *An Order of Mandamus that the Respondents order the return of the Applicant to HMP Northward, Grand Cayman to serve the remainder of his prison sentence.*”

1 4. The Respondents sought the Court's approval of the appointment by the Attorney General  
2 of Mr. Ashley Underwood Q.C as Special Advocate in the proceedings. This Order was  
3 made with the consent of the Plaintiffs.

4  
5 5. The third matter to be determined at the hearing was whether a Closed Material Procedure  
6 (CMP) could be adopted in the instant proceedings. Counsel for the Respondents invited the  
7 court to consider this issue before its consideration of the PII application, which application  
8 was to be heard in closed session. Counsel for the Respondents submitted that the court  
9 should determine, at the very least, whether a CMP was available *as a matter of principle*  
10 before determining the PII application, as on their view, the availability or not of a CMP  
11 would be a relevant consideration on the PII application; the relevance being that if the  
12 Court were to conclude that a CMP was available in principle, then if, as it considered the  
13 PII application, it became apparent to the Court that there were documents that could not be  
14 disclosed in the public interest, the court should stay the PII application and invoke the CMP.  
15 Counsel for the Plaintiffs did not agree with this proposed sequence. However, this court is  
16 clear that the considerations for the Court, as to whether a CMP is available in principle or  
17 not, are different from those that the Court must consider when determining the PII  
18 application. For this reason, and keeping these aspects firmly in view, the court will consider  
19 the CMP issue first.

20  
21 **The Respondents' arguments**

22  
23 6. The Respondents submitted that there were four avenues from which authority for a CMP  
24 may be derived. The first of these being where there is statutory authority for a CMP,





1 whether express or implied; second, where in the absence of statutory authority, a CMP may  
2 be authorised under the court’s inherent jurisdiction for ‘*special reasons in the interests of*  
3 *justice*’; third, where a CMP is authorised in the court’s inherent jurisdiction when a statute  
4 has authorised a public body to take into account material which need not be disclosed to the  
5 individual on PII grounds and, on a judicial review of that decision, the Court would  
6 otherwise be unable to take into account the same material as the original decision-maker;  
7 and fourth, where the alternative to authorizing a CMP is that the Court, having excluded  
8 material on the basis of an orthodox PII procedure, cannot fairly determine the matter without  
9 a CMP and will otherwise strike it out as un-triable and the parties agree.

10

11 7. The Respondents’ application is for the court to find that a CMP “*may be authorised by the*  
12 *Grand Court under its inherent jurisdiction for ‘special reasons in the interests of justice’*  
13 *where, as here, it is necessary for the Court in determining a judicial review application to*  
14 *be able to take into account the PII material that was properly before the Secretary of State*  
15 *and R1 when making their decisions under the 1884 Act.*”

16

17 8. The Respondents submit that the Grand Court exercises the same jurisdiction as the High  
18 Court of England and Wales (“High Court”) in addition to its inherent jurisdiction within the  
19 Cayman Islands in its own right as a superior court of record. Section 11(1) of the **Grand**  
20 **Court Law** provides as follows:

21 “... *in addition to any jurisdiction heretofore exercised by the Court or conferred*  
22 *by this or any other law for the time being in force in the Islands, shall possess and*  
23 *exercise, subject to this and any other law, the like jurisdiction within the Islands*  
24 *which is vested in or capable of being exercised in England by (a) Her Majesty’s*  
25 *High Court of Justice; and (b) the Divisional Courts of that Court as constituted by*  
26 *the Senior Courts Act, 1981, and any Act of the Parliament of the United Kingdom*  
27 *amending or replacing that Act.*”  
28

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*



1 9. The Respondents’ further submission is that the High Court under s.19(2) of the *Senior*  
2 *Courts Act, 1981* has the following ‘General jurisdiction’<sup>2</sup>, namely:

3 “19 **General Jurisdiction of the High Court**

- 4 (1) ... .
- 5 (2) ...—
  - 6 (a) *all such jurisdiction (whether civil or criminal) as is conferred on it by*
  - 7 *this or any other Act; and*
  - 8 (b) *all such other jurisdiction (whether civil or criminal) as was exercisable*
  - 9 *by it immediately before the commencement of this Act (including*
  - 10 *jurisdiction conferred on a judge of the High Court by any statutory*
  - 11 *provision).*
- 12 (3) ...
- 13 (4) ... .”

15 10. The Respondents submit that the ‘*jurisdiction ... exercisable ... before the commencement of*  
16 *this Act*’ referred to in s.19(2)(b) includes the High Court’s inherent jurisdiction and that this  
17 inherent jurisdiction is capable of conferring jurisdiction to adopt a CMP, at least in cases  
18 ‘*for special reasons in the interests of justice*’, namely ‘*where inability to adopt a closed*  
19 *material procedure would render the whole object of the proceedings futile and where the*  
20 *interests of third parties (such as informers) are potentially engaged*’. The Respondents  
21 submit that the present case is one such case.

23 11. This argument, when viewed in the context of the specific issues in this case surrounding the  
24 ***Colonial Prisoners Removal Act, 1884*** was stated by the Respondents as follows:

26 “*The statutory procedure provided for by s 2 of the 1884 Act envisages the*  
27 *Secretary of State taking into account a wide range of material, including material*  
28 *that cannot be disclosed to a prisoner on public interest grounds, in deciding that*  
29 *‘there being no prison in [the Cayman Islands] in which the prisoner can properly*  
30 *undergo his sentence or otherwise the removal of the prisoner is expedient for his*

<sup>2</sup>See sections 20, 25-31A and also sections 32-43A.

1                    *safer custody’ and, in the case of RI, that she ‘concurrs’ in that decision under s 5.*  
2                    *As in Haralambous, para 57, it would be ‘self-evidently unsatisfactory, and*  
3                    *productive potentially of injustice and absurdity’ if the Grand Court were bound to*  
4                    *decide a judicial review of those decisions on a different basis from that which RI*  
5                    *had ‘quite rightly adopted and been required to adopt when first considering the*  
6                    *matter’.*  
7

8                    12.        The Respondents, in support of this submission, also referred to s.31(2A) and 31(3C) of the  
9                    *Senior Courts Act 1981* which they state apply in the Cayman Islands by virtue of s.11  
10                    *Grand Court Law* (2015 Revision).

11  
12                    13.        These sections were referred to in *Haralambous*<sup>3</sup> thus:

13                    “58.        *Since the events giving rise to the present litigation, section 31 has also been*  
14                    *amended by the introduction of subsections (2A) and (3C) by section 84(1)*  
15                    *and (2) of the Criminal Justice and Courts Act 2015. Subsection (2A)*  
16                    *provides that the High Court must refuse relief on an application for judicial*  
17                    *review “if it appears to the court to be highly likely that the outcome for the*  
18                    *applicant would not have been substantially different if the conduct*  
19                    *complained of had not occurred” (unless the court considers under*  
20                    *subsection (2B) that it is appropriate to disregard this requirement for*  
21                    *reasons of exceptional public interest). Subsection (3C) provides that, when*  
22                    *considering whether to grant leave for judicial review, the High Court “may*  
23                    *of its own motion consider whether the outcome for the applicant would*  
24                    *have been substantially different if the conduct complained of had not*  
25                    *occurred”. These subsections again postulate that the High Court will be*  
26                    *considering the outcome on the same basis as the lower court or tribunal.”*  
27

28                    14.        The Respondents argue that s.31(2A) and (3C) require the Grand Court to consider the  
29                    application for judicial review on the basis of the same evidence as the original decision-  
30                    maker. Therefore, in this case where it was imperative that the Court have access to material  
31                    that is immune from disclosure on Public Interest grounds if there were no CMP then the  
32                    Grand Court would not be considering the application on the same basis.

---

<sup>3</sup> [2018] UKSC 1



1 15. The Respondents ask this Court to consider that any unfairness that may be caused by a CMP  
2 may be offset by the appointment of a Special Advocate and the disclosure that has been  
3 made to the Plaintiffs to date including the gist of the allegations upon which the decision to  
4 transfer was made. The Respondents ask that the Court consider too that CMPs have been  
5 held not to be incompatible with the European Convention on Human Rights, which in the  
6 instant case would encompass rights protected by the Bill of Rights to the *Cayman Islands*  
7 *Constitution*, once they are accompanied by these safeguards. In this regard the Court was  
8 referred to the cases of *Tariq v Home Office (SC(E))*<sup>4</sup>; *Secretary of State for the Home*  
9 *Department v AF (No 3)*<sup>5</sup>; and *A v United Kingdom*<sup>6</sup>.

10  
11 16. The Respondents emphasized what could result from the Court finding that CMP was not  
12 available:

13  
14 *“Alternatively, if no CMP is available then the Court may be left with no other*  
15 *option but to apply the presumption of regularity ... in which case the Ps’*  
16 *applications would be bound to fail, or reopen the forum non conveniens issue to*  
17 *allow the claims to proceed before the High Court in the United Kingdom where a*  
18 *CMP is available. Alternatively, a CMP can be held with the parties’ consent.”*

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<sup>4</sup> [2012] 1 AC

<sup>5</sup> [2010] 2 AC 269, para 59

<sup>6</sup> (2009) 49 EHRR 625, para 220



1 **The Plaintiffs' arguments**

2

3 17. The Plaintiffs' answer to the Respondents' submissions start from the general principle that  
4 CMPs require express statutory provisions authorizing their adoption because:

5

6 *"... a closed material procedure involves a departure from both the open justice*  
7 *and the natural justice principles.<sup>7</sup>"*  
8

9 18. It is the very fact that a CMP, even one authorized by statute, is a departure from fundamental  
10 common law principles of fairness, the Plaintiffs submit, that should lead to the conclusion  
11 that it is only lawful because Parliament has authorized it.<sup>8</sup>

12

13 19. The Plaintiffs agree with the Respondents that CMPs are available where they are expressly  
14 provided for or implicit within the statutory scheme because such an interpretation would in  
15 effect be a reflection of the principle of legality. Referring to Section 26 of the Bill of Rights  
16 the Plaintiffs maintain that the Grand Court's duty where an allegation of a breach of the Bill  
17 of Rights is made, is to determine such application fairly. In this context CMP's are  
18 recognized departures from the normal standards of fairness, and for this reason this Court  
19 should be reluctant to develop a CMP jurisdiction in circumstances in which there has been  
20 no consideration of the implications of that development by the legislature.

21

22 20. Section 26 of the Bill of Rights states as follows:

23



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<sup>7</sup> *Al Rawi v Security Service* [2012] 1 AC 531 at paragraph 14

<sup>8</sup> *W v Secretary of State* [2010] EWCA Civ 898 at paragraphs 453 – 454.

1                   “26. (1)     Any person may apply to the Grand Court to claim that government  
2                   has breached or threatened his or her rights and freedoms under  
3                   the Bill of Rights and the Grand Court shall determine such an  
4                   application fairly and within a reasonable time.”  
5

6 21.     The Plaintiffs accept that there were circumstances in which the public interest has enabled  
7           courts to develop an inherent power to order a CMP, the third of the bases for a CMP  
8           suggested by the Respondents. However, the Plaintiffs argue, these circumstances are very  
9           limited.<sup>9</sup> The Plaintiffs invited the court to consider what was stated by the Supreme Court  
10          in *Haralambous* at paragraph 53, referring to *Al-Rawi*:

11  
12                   “53.     However, in *Al Rawi* the Supreme Court said that a closed material  
13                   procedure is inadmissible, without Parliamentary authorisation, in judicial  
14                   review as it is in any ordinary civil claim: see eg paras 39 and 62, per Lord  
15                   Dyson. The two “narrowly defined” exceptions which it recognised as  
16                   existing related to: (i) cases where “the whole object of the proceedings is  
17                   to protect and promote the best interests of a child [and] disclosure of some  
18                   of the evidence would be so detrimental to the child’s welfare as to defeat  
19                   the whole object of the exercise” (para 63, quoting *Lady Hale in Secretary*  
20                   *of State for the Home Department v MB [2008] 1 AC 440, para 58*); and (ii)  
21                   cases where the whole object of the proceedings is to protect a commercial  
22                   interest, and where full disclosure would render the proceedings futile  
23                   (cases in which a “confidentiality ring” is commonplace) (para 64).”  
24

25 22.     The Plaintiffs submitted this case does not fall within the category of cases in which courts  
26           have developed an inherent power to order a CMP for such cases were cases in which a CMP  
27           is implicitly required by the statutory provisions governing the jurisdiction of the courts. The  
28           Plaintiffs went further to submit that  
29



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<sup>9</sup> In this regard the applicants referred to (*Haralambous* at [53]) and to (*Al Rawi* at [63] onwards).



1 “A conclusion that there is an implicit power would represent a substantial  
2 extension of the circumstances in which implicit powers exist. The rejection of the  
3 Respondents’ arguments that a CMP should be ordered will not undermine the  
4 whole object of the proceedings. The Court will be required to determine the claim  
5 by reason of section 26(1). It will consider whatever material it can properly  
6 consider.”

7 23. The Plaintiffs submitted that the mere fact a matter will become untriable without a CMP  
8 does not mean that a CMP should be ordered, citing *Carnduff v Rock*.<sup>10</sup> In *Carnduff*, the  
9 Court of Appeal dealt with an application to strike out the claim by the Plaintiff, a police  
10 informer, to recover remuneration for the supply of information to the Police. The  
11 application to strike was refused by the trial judge but reversed by the Court of Appeal which  
12 held that:

13  
14 *“a fair trial of the issues arising from the pleadings would necessarily require the*  
15 *police to disclose, and the court to investigate and adjudicate upon, sensitive*  
16 *information which should in the public interest remain confidential to the police;*  
17 *that the public interest in withholding the evidence relating to such issues*  
18 *outweighed the countervailing public interest in having the claim litigated on the*  
19 *available relevant evidence; that the claim could not be litigated consistently with*  
20 *the public interest and any attempt to do so would gravely distort the very process*  
21 *of litigation and compromise the business of doing justice.”*  
22

23 24. The Plaintiffs submitted that the *Carnduff* conclusion should not arise in the instant case  
24 because: “A finding that this claim is un-triable is prohibited by the express duty to determine  
25 it imposed by section 26(1) of the Bill of Rights. It is also supported by the arguments that  
26 national security is not truly in issue...” in this case.

27  

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<sup>10</sup> [2001] 1 WLR 1786)

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*

1 25. The Plaintiffs submitted that in *Haralambous* the Supreme Court founded its jurisdiction on  
2 that fact that the procedure had been authorized by Parliament in the lower court or tribunal  
3 under review. The court’s attention was drawn to paragraph 59 of the Supreme Court’s  
4 judgment in that case.

5 *“In the light of these statutory provisions and of an analysis of the alternative*  
6 *possibilities paralleling that undertaken in Bank Mellat, I consider that the only*  
7 *sensible conclusion is that judicial review can and must accommodate a closed*  
8 *material procedure, where that is the procedure which Parliament has authorised*  
9 *in the lower court or tribunal whose decision is under review. The Supreme Court,*  
10 *when it referred in passing to judicial review in Al Rawi, was not directing its*  
11 *attention to this very special situation. If it had done so, it might also have seen a*  
12 *similarity between this situation and the two exceptions which it did identify, where*  
13 *inability to adopt a closed material procedure would render the whole object of the*  
14 *proceedings futile and where the interests of third parties (such as informers) are*  
15 *potentially engaged. Be that as it may be, I consider that the scheme authorised by*  
16 *Parliament for use in the magistrates’ court and Crown Court, combined with*  
17 *Parliament’s evident understanding and intention as to the basis on which judicial*  
18 *review should operate, lead to a conclusion that the High Court can conduct a*  
19 *closed material procedure on judicial review of a magistrate’s order for a warrant*  
20 *under section 8 PACE or a magistrate’s order for disclosure, or a Crown Court*  
21 *judge’s order under section 59 of the CJPA. I add, for completeness, that, even*  
22 *before judicial review was regulated by statutory underpinning, I would also have*  
23 *considered that parallel considerations pointed strongly to a conclusion that the*  
24 *present situation falls outside the scope of the principle in Al Rawi and that a closed*  
25 *material procedure would have been permissible on a purely common law judicial*  
26 *review.”*

27  
28 26. Counsel for the Plaintiffs argued that while in *Haralambous* it may seem to follow that if  
29 Parliament had authorized a closed procedure for a lower court then it made sense that that  
30 same procedure was available for higher courts, that this was different when what was before  
31 this court was an administrative decision maker being authorized to consider confidential  
32 material where there is no issue of such being contrary to common law principles. Counsel  
33 argued that essentially on this view, *Haralambous* was a narrow example of the principle of  
34 legality being applied.

1 27. Counsel for the Plaintiffs submitted that in the instant case there is no legislation in the  
2 Cayman Islands authorizing a CMP, thereby differentiating the instant case from a situation  
3 where CMP was being developed to support an already existing statutory jurisdiction. He  
4 emphasized that even in such circumstances, statutory safeguards that support the CMP  
5 procedure would be necessary to balance the inherent unfairness of the CMP.

6  
7 28. In answer to the Respondents' submissions that there is a power to order a CMP because the  
8 Grand Court enjoys the same inherent powers as the English High Court the Plaintiffs argue  
9 that in United Kingdom the inherent powers of the High Court are limited and do not apply  
10 and that even in the United Kingdom the High Court would not have jurisdiction to order a  
11 CMP in the circumstances of this case even taking account of its statutory powers. The  
12 Plaintiffs contend that: "*The existence of statutory powers that do not extend to this situation*  
13 *is a strong indicator that there are no relevant inherent powers.*"

14  
15 29. Counsel for the Plaintiffs referred specifically to the *Justice and Security Act 2013* in his  
16 submission in order to emphasize its submission that courts of England and Wales do not  
17 have unrestricted powers to conduct closed material procedures. Counsel pointed out that  
18 s.6(4) of the *Justice and Security Act 2013* merely authorizes a closed procedure where there  
19 is sensitive material. Section 6(11) defines sensitive material as being:

20  
21 *"... material the disclosure of which would be damaging to the interests of national*  
22 *security."*  
23

24 30. The Plaintiffs submitted that the Court should find that the use of the phrase national security  
25 in s.6 is plainly intended to restrict closed procedures to exceptional cases and asked this



1 court to consider that in the instant case the open allegations appear to relate to normal  
2 criminality which they submit rarely rises to the position of being seen to pose a risk or  
3 danger to the security or well-being of the nation. The Plaintiffs assert that such claims to  
4 national security should be closely scrutinized and went further to state that it would be  
5 inappropriate for the Respondents to be allowed to rely on unsubstantiated claims to national  
6 security to deny the Plaintiffs their Rights. In this regard the Court was referred to the case  
7 of *CG v Bulgaria*.<sup>11</sup>

8  
9 31. In *CG v Bulgaria* the first applicant, a Turkish national resident in Bulgaria was deported as  
10 he was found to be a national security threat. He challenged the decision on the grounds that  
11 the measures against him interfered with his right to a family life and that article 8 of the  
12 European Convention had been infringed. The court held that there had been a violation of  
13 Article 8 as the deportation measure affected fundamental rights and therefore the applicant  
14 must have access to an adversarial process before an independent authority. Further that:

15  
16 *“... although a large margin of appreciation may be left to the executive to*  
17 *determine what is in the interests of security, the national courts must subject the*  
18 *executive’s assertion that an individual presented a national security risk to*  
19 *meaningful scrutiny. While the safeguards afforded a person in a case genuinely*  
20 *implicating national security may be limited, cases involving the deterrence of*  
21 *ordinary crime will tend to require stronger procedural protection.”*  
22

23 32. The Plaintiffs’ position on the CMP and PII was as follows:

24  
25 *“In this case it cannot be determined whether there is a public interest in a CMP*  
26 *until after PII is determined. It will only be at that stage that it will be possible to*

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<sup>11</sup> (2008) 47 EHRR 51 at page 40

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*



1 determine whether the case can be tried without a CMP. Because a CMP is an  
2 exceptional procedure, the Plaintiffs submit that a fair trial is possible applying the  
3 correct approach to PII (see above). As a consequence, no CMP can be  
4 demonstrated to be necessary. However, were it to be concluded that no fair trial  
5 is possible so that there should be a stay applying the principles in *Carnduff*, a  
6 jurisdiction to hold a CMP might be established. That would be necessary in light  
7 of the express duty to determine the claim imposed by section 26. In those  
8 circumstances it might be said that section 26 gave implied statutory authority for  
9 a CMP. However, as already noted, it should be noted that the Respondents do not  
10 seek to argue that this case can/should become un-triable.”

11

12 33. The Plaintiffs’ concluding position on this issue was that this court had no jurisdiction to  
13 order a CMP or alternatively that a CMP can only be ordered where there was no possibility  
14 of a fair trial and the Court sought to balance this against the obligation under s.26 (1) of the  
15 Bill of Rights that any allegation of interference with rights under the Bill of Rights was to  
16 be determined “fairly”.

17

18 **Court’s reasoning**

19

20 34. The Respondents argued that there were four bases upon which this court could find that a  
21 CMP was appropriate and available. The first of these was where there exists a statutory  
22 authority for CMP either expressed or implied. The relevant legislation in this case does not  
23 authorize a CMP. The second was “in the absence of statutory authority, a CMP may be  
24 authorised under the court’s inherent jurisdiction for ‘*special reasons in the interests of*

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*

1 justice'. In order to support this proposition, the Respondents referred to the Supreme Court's  
2 judgment in *Haralambos*.

3 35. The Respondents' 3<sup>rd</sup> and 4<sup>th</sup> propositions also found their basis by reference to *Haralambos*  
4 and *Al-Rawi*:

5  
6 *"Third, one such instance where a CMP is authorised in the court's inherent*  
7 *jurisdiction is if a statute has authorised a public body to take into account material*  
8 *which need not be disclosed to the individual on PII grounds and, on a judicial*  
9 *review of that decision, the Court would otherwise be unable to take into account*  
10 *the same material as the original decision-maker: ...[Haralambous]*

11  
12 *Fourth, where the alternative is that the Court, having excluded material on the*  
13 *basis of an orthodox PII procedure, cannot fairly determine the matter without a*  
14 *CMP and will otherwise strike it out as untriable and the parties agree: Al Rawi,*  
15 *para 120 (Mance and Hale JJSC), 186 (Clarke JSC); para 46, 74, 98, 186 (Dyson,*  
16 *Hope, Kerr JJSC doubting, but leaving the question open).*"

17  
18 36. In order to put *Haralambous* in proper context the Supreme Court's approach in the case of  
19 *Al-Rawi* must be carefully considered.

20  
21 37. In *Al-Rawi*, the issue that arose on the appeal was whether the court had the power to order  
22 a "closed material procedure" for the whole or part of the trial of a civil claim for damages  
23 and if so in what circumstances it was appropriate to exercise that power. The claimants in  
24 *Al-Rawi* brought an action for false imprisonment, trespass to the person, conspiracy to

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*

1 injure, torture and breach of the *Human Rights Act 1998* arising from their detention and  
2 alleged ill-treatment of them by foreign authorities. The appellants submitted that there was  
3 relevant material which they wished the court to consider, but which they would be obliged  
4 in the public interest to withhold from disclosure.

5

6 38. The Appellants argued that a closed procedure may be necessary in order to achieve real  
7 justice and a fair trial and that there was no reason in principle why in the exercise of its  
8 inherent jurisdiction the court should not be able to order such a procedure in cases where a  
9 defendant cannot deploy its defence fully (or sometimes not at all) if it is required to follow  
10 an open procedure. For this reason, the court should have the power to substitute, **at least in**  
11 **exceptional cases**, a closed material procedure for a conventional PII exercise.

12

13 39. The Respondent argued that open procedures are fundamental to the system of justice, that  
14 a closed material procedure would be such a fundamental change to the way in which  
15 ordinary civil litigation (including judicial review) is conducted that it should not be  
16 introduced by the courts and that any such change could only be made by Parliament.

17

18 40. Relevant to the issues in the instant case, Lord Dyson stated as follows:

19 *“In proceedings which are not regulated by statute or statutory rules, it might be*  
20 *thought that there are no limits to the inherent power of the court to regulate its*  
21 *own procedure and that it has an untrammelled power to manage litigation in*  
22 *whatever way it considers necessary or expedient in the interests of justice.*

23

24 *But even in an area which is not the subject of statute or statutory procedural rules,*  
25 *there are limits to the court’s inherent jurisdiction to regulate how civil and*  
26 *criminal proceedings should be conducted.”*

27

1 41. Lord Dyson drew upon the Court’s decision in the case of *R v Davis*<sup>12</sup>, a case concerned with  
2 the rights of a defendant in a criminal case to be confronted by his accusers. He viewed the  
3 issue of a CMP as analogous to that of such a defendant. He stated:



4  
5 “... subject to certain exceptions and statutory qualifications, the right to be  
6 confronted by one’s accusers is such a fundamental element of the common law  
7 right to a fair trial that the court cannot abrogate it in the exercise of its inherent  
8 power. Only Parliament can do that. The closed material procedure excludes a  
9 party from the closed part of the trial. He cannot see the witnesses who speak in  
10 that part of the trial; nor can he see closed documents; he cannot hear or read the  
11 closed evidence or the submissions made in the closed hearing; and finally he  
12 cannot see the judge delivering the closed judgment nor can he read it.”  
13

14 42. In considering whether as argued before the Court it could be agreed that the court has the  
15 power to order a closed material procedure in exceptional cases where this is necessary in  
16 the interests of justice, the Court found that this would only pose the further question of “*in*  
17 *what circumstances can it ever be in the interests of justice to deny a litigant in ordinary*  
18 *civil claims (including claims for judicial review) the rights which are entrenched in our*  
19 *common law system as being fundamental requirements of justice itself*”.

20  
21 43. On the issue of whether the court should be able to supplement the PII process with such a  
22 procedure in exceptional circumstances, Lord Dyson found that there was “no compelling  
23 reason for change”.

24  
25 44. In *Haralambous*, the issue in so far as it is relevant to the instant case was whether in  
26 “*proceedings for judicial review of the legality of a search warrant, issued ex parte under*  
27 *sections 8 and 15(3) of PACE*:

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<sup>12</sup> [2008] UKHL 36, [2008] AC 1128

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*

1 a) *it is permissible for the High Court to have regard to evidence (upon which the*  
2 *warrant was issued) which is not disclosed to the subject of the warrant?”*

3

4 45. The Appellants before the court argued that the in the absence of express statutory  
5 authorisation, the common law principle in *Al Rawi* applied to preclude any form of closed  
6 material procedure.

7

8 46. The Supreme Court considered a line of authorities from *Rossminster*<sup>13</sup> to *Al-Rawi*,  
9 including *Competition and Markets Authority v Concordia*<sup>14</sup>, *Carnduff v Rock*<sup>15</sup>; and *AHK*  
10 *v Secretary of State for the Home Department*<sup>16</sup>. The court concluded that:

11 *“The result reached in the Rossminster line of authority is unattractive, in that it is*  
12 *in some circumstances capable of depriving judicial review of any real teeth.”*  
13

14 47. Critically the Court, delving further into the submission that the Court on judicial review of  
15 a warrant under section 8 of PACE or of an order under s.59 of the *CJPA* can adopt a closed  
16 material procedure, stated as follows:

17 *“Such a review would mirror that which, as I have already provisionally*  
18 *concluded, is open to the magistrate for a warrant under section 8 or for disclosure*  
19 *under Bangs or to the Crown Court on an application under section 59 of the CJPA.*  
20 *That is its attraction. Judicial review should be effective and able to address the*  
21 *decision under review on the same basis that the decision was taken. The*  
22 *Rossminster line of authority involves an awkward mismatch between the bases of*  
23 *the original and reviewing decisions. So too does the reverse approach taken by*  
24 *Marcus Smith J in Concordia.”*  
25



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<sup>13</sup> *IRC v Rossminster*  
<sup>14</sup> [2017] EWHC 2911 (Ch)  
<sup>15</sup> [2001] EWCA Civ 680 [2001] 1 WLR 1786  
<sup>16</sup> [2012] EWHC 1117 (Admin)

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*

1 48. After referring to Al-Rawi and noting the two narrowly defined exceptions to the principle  
2 that Parliamentary authorization was necessary for a CMP to be adopted in judicial review  
3 as in any other civil claim, the Court compared its position on a judicial review to that which  
4 arose in the case of *Bank Mellat (Appellant) v HM Treasury (Respondent) (No 1)*<sup>17</sup>. In  
5 *Bank Mellat*, Lord Neuberger expressed at paragraph 44 that:

6

7 *“It might, I suppose, be said that adopting a closed material procedure*  
8 *on any appeal would involve the antithesis of doing justice in that appeal.*  
9 *In a case where Parliament and the CPR have lawfully provided for a closed*  
10 *material procedure at First instance and in the Court of Appeal, I am of the view*  
11 *that, on the contrary, for this court to entertain an appeal without considering the*  
12 *closed material would, at least in many cases, not be doing justice, either in the*  
13 *sense of fairly determining the appeal or in the sense of G being seen fairly to*  
14 *determine the appeal, notwithstanding that the material will be considered in a*  
15 *closed hearing.”*  
16

17 49. The court recognized that in *Bank Mellat*:

18 *“... the courts below had express power to conduct a closed material procedure,*  
19 *under Part 6 of the Counter-Terrorism Act 2008 (“the 2008 Act”). The Supreme*  
20 *Court had none.”*  
21

22 50. The Supreme Court in *Haralambous* concluded that:

23 *“If a closed material procedure was not permissible, the alternative analyses were*  
24 *that (a) the appeal could not be entertained (compare Carnduff v Rock) or (b) the*  
25 *Supreme Court could consider the closed material in open court, or (c) the Court*  
26 *could determine the appeal without looking at the closed material (compare*  
27 *Concordia), or (d) the Court would be bound to allow the appeal or (e) the Court*  
28 *would be bound to dismiss the appeal (compare Rossminster). Lord Neuberger,*  
29 *speaking for the majority, said that analysis (a) ran contrary to section 40(2),*  
30 *analysis (b) would wholly undermine Part 6 of the 2008 Act, analysis (c) “would*  
31 *be self-evidently unsatisfactory and would seriously risk injustice, and in some*  
32 *cases it would be absurd” and each of analyses (d) and (e) was “self-evidently*  
33 *equally unsatisfactory”.*  
34

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<sup>17</sup>[2013] UKSC 38



1 51. The Supreme Court also found that each of these alternative possibilities to a closed material  
2 procedure identified by Lord Neuberger in *Bank Mellat* exists by analogy in relation to  
3 judicial review and, when so applied, each can be seen to be as unsatisfactory in relation to  
4 judicial review as in relation to an appeal in *Bank Mellat*. The Court went on to find that:

5 *“... many of the considerations which were of weight in Bank Mellat on an appeal*  
6 *from lower courts conducting closed material procedures are also of weight in*  
7 *relation to judicial review of lower courts conducting such procedures.”*  
8

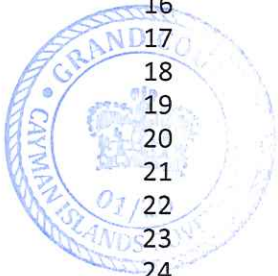
9 52. The Supreme Court also considered the provisions of the *Senior Courts Act 1981*, Section  
10 31(1) of which itself had been amended to make provision for instances in which judicial  
11 review may be refused to find that “These subsections again postulate that the High Court  
12 will be considering the outcome on the same basis as the lower court or tribunal.” The  
13 Supreme Court therefore concluded that:

14 *“In the light of these statutory provisions and of an analysis of the alternative*  
15 *possibilities paralleling that undertaken in Bank Mellat, I consider that the only*  
16 *sensible conclusion is that judicial review can and must accommodate a closed*  
17 *material procedure, where that is the procedure which Parliament has authorised*  
18 *in the lower court or tribunal whose decision is under review. The Supreme Court,*  
19 *when it referred in passing to judicial review in Al Rawi, was not directing its*  
20 *attention to this very special situation. If it had done so, it might also have seen a*  
21 *similarity between this situation and the two exceptions which it did identify, where*  
22 *inability to adopt a closed material procedure would render the whole object of the*  
23 *proceedings futile and where the interests of third parties (such as informers) are*  
24 *potentially engaged. Be that as it may be, I consider that the scheme authorised by*  
25 *Parliament for use in the magistrates’ court and Crown Court, combined with*  
26 *Parliament’s evident understanding and intention as to the basis on which judicial*  
27 *review should operate, lead to a conclusion that the High Court can conduct a*  
28 *closed material procedure on judicial review of a magistrate’s order for a warrant*  
29 *under section 8 PACE or a magistrate’s order for disclosure, or a Crown Court*  
30 *judge’s order under section 59 of the CJPA.”*  
31

32 53. The Respondents ask this court to adopt a procedure that is not known in the Cayman Islands  
33 in judicial review proceedings. This is the first point of dissimilarity between this  
34 jurisdiction and the United Kingdom in relation to closed material procedures. In the UK

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*



1 closed material procedures are available through legislation relating to various tribunals such  
2 as the immigration tribunal, and tribunals within the national security context such as the  
3 Special Immigration Appeals Commission.  
4

5 54. This Court agrees with the Respondents' submissions on the inherent jurisdiction of the  
6 Grand Court and its relation to the High Court in the United Kingdom. However, this Court  
7 is mindful that it should approach with caution the extension of its inherent jurisdiction  
8 especially if to do so would thereby authorize a procedure that on its face is a departure from  
9 the principles of open justice and natural justice. Even in *Haralambous* the Supreme Court  
10 did not seek to rely solely on its inherent jurisdiction as its basis for authorizing a CMP.

11  
12 55. The decision in *Haralambous* dealt with a very specific issue then before the court.  
13 However, while it is at least arguable that the decision has a wider interpretation which could  
14 lead to a court on judicial review implying that CMP was available where the decision that  
15 was being challenged was from a decision of a lower court or tribunal where CMP was  
16 expressly permitted by statute, the Respondents in this case posit an even wider  
17 interpretation, that CMP can be used in any judicial review of a decision of a lower court,  
18 tribunal or in this case administrative decision maker, where that body has withheld evidence  
19 from an affected party, albeit only where the court finds that there exists in such a case  
20 'special reasons in the interests of justice'

21  
22 56. On this court's reading of *Haralambous* the Supreme Court was careful to repeat that a CMP  
23 was only to be accommodated:

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*

1                                    “where that is the procedure which Parliament has authorised in the lower court  
2                                    or tribunal whose decision is under review.”  
3

4   57.        Again and again the Court emphasized this aspect of its finding that CMP could be allowed  
5                    in judicial review proceedings: “*where the scheme authorised by Parliament for use in the*  
6                    *magistrates’ court and Crown Court, combined with Parliament’s evident understanding*  
7                    *and intention as to the basis on which judicial review should operate*, lead to a conclusion  
8                    that the High Court can conduct a closed material procedure on judicial review...”.

9  
10   58.        The Supreme Court in essence sanctioned a procedure that Parliament had already  
11                    determined could be conducted by the lower court or tribunal under review. The court  
12                    limited its encroachment on the principles of natural justice by aligning its inherent  
13                    jurisdiction with that of previous Parliamentary approval of such encroachment. While the  
14                    court pointed to other instances where, as the Respondents submit, there are ‘*special reasons*  
15                    *in the interests of justice*’ such as ‘*where [an] inability to adopt a closed material procedure*  
16                    *would render the whole object of the proceedings futile and where the interests of third*  
17                    *parties (such as informers) are potentially engaged*’, it is instructive that the Court did not  
18                    go beyond that statement to say that in such a case the Court’s inherent jurisdiction alone  
19                    could lead to a CMP being conducted.

20  
21   59.        This court must be careful of the extent of its application of the inherent jurisdiction.  
22                    Professor Martin Dockray said in “*The Inherent Jurisdiction to Regulate Civil*  
23                    *Proceedings*<sup>18</sup>”:

24                                    “...a matter which is procedural from the position of an applicant may be  
25                                    constitutional in the eyes of the respondent. The fact that procedural law can be

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<sup>18</sup> (1997) 113 LQR 120, at 131

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 02.07.2020.*



1 described as subordinate or adjectival because it aims to give effect to substantive  
2 rules should not conceal the truth that procedures can and do interfere with  
3 important human rights, while the means by which a decision is reached may be  
4 just as important as the decision which is made in the end. Where procedure is as  
5 important as substance, procedural change requires the same degree of political  
6 accountability and economic and social foresight as reform of an equivalent rule  
7 of substantive law. Major innovations in procedural law should therefore be  
8 recognised as an institutional responsibility, not a matter on which individual  
9 judges should respond to the pleas of particular litigants. Procedural revolutions  
10 should appear first in statutes or in the Rules of Court, not in the law reports.”  
11

12 60. In *Al-Rawi*, even when the court recognized that a case could become un-triable, the court  
13 was careful to limit the application of a principle that would accommodate a CMP. The  
14 court recognized the flexibility of the common law and its ability to develop and adapt to  
15 changing circumstances over time. However, it cautioned:

16  
17 *“Sometimes, it takes giant steps forward. More often, it evolves gradually and*  
18 *cautiously. But any change must be justified, otherwise the law becomes unstable.*  
19 *This is particularly important where a change involves an inroad into a*  
20 *fundamental common law right. The introduction of a closed material procedure in*  
21 *ordinary civil claims (including claims for judicial review) would do just that.”*  
22

23 61. In *Al-Rawi* when the court went on to consider whether the CMP should replace a PII in  
24 exceptional circumstances, it reasoned that:

25 *“there is no compelling reason for change. The PII process is not perfect, but it*  
26 *works well enough. In some cases, it is cumbersome and costly to operate, but a*  
27 *closed material procedure would be no less so. I agree with the Court of Appeal*  
28 *that the issues of principle raised by the closed material procedure are so*  
29 *fundamental that a closed material procedure should only be introduced in*  
30 *ordinary civil litigation (including judicial review) if Parliament sees fit to do so.*  
31 *No doubt, if Parliament did decide on such a course, it would do so in a carefully*  
32 *defined way and would require detailed procedural rules to be made (such as CPR*  
33 *Parts 76 and 79) to regulate the procedure.”*  
34

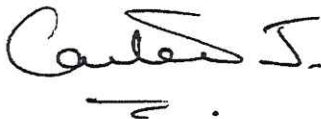
35 62. In the instant case, where the Respondents can point to no relevant statutory authority  
36 authorizing CMP, where the inherent jurisdiction of the court is insufficient in and of itself

1 for this court to imply an authority to authorize a CMP on an application for judicial review  
2 even if the court were to find that there were “*special reasons in the interests of justice*’ in  
3 this case and when on this court’s analysis none of the authorities relied on by the  
4 Respondents support their submissions to the extent necessary for this court to agree that a  
5 CMP can be sanctioned by this court in the circumstances of this case, this court is not  
6 prepared to entertain the wider interpretation of *Haralambous* that the Respondents invite.  
7 There is no basis for its authorization.  
8

9 63. At the conclusion of Counsel for the Plaintiffs’ oral submissions to the Court, he recognized  
10 that “ultimately, a closed procedure is better than the case being dismissed on the basis that  
11 the case has either become untriable or the presumption of legality means we are bound to  
12 lose.” Even at that point where he conceded that the better solution, faced with those options,  
13 was to have a CMP, he stated: “we cannot see how it is authorized.” Neither can this court.  
14

15 64. The Respondents’ invitation to the court to find that a CMP may be authorised under the  
16 court’s inherent jurisdiction for ‘*special reasons in the interests of justice*’ is rejected.  
17  
18  
19

20 Dated this the 2<sup>nd</sup> July 2020

21 

22 Hon. Justice Marlene I Carter  
23 Acting Judge of the Grand Court



IN THE GRAND COURT OF THE CAYMAN ISLANDS  
CIVIL DIVISION

Cause No.: 155 of 2017  
Legal Aid No. LACR/0162/2015

BETWEEN

OSBOURNE DOUGLAS

Plaintiff

And

(1) THE GOVERNOR OF THE CAYMAN ISLANDS  
(2) THE DIRECTOR OF PRISONS

Respondents

AND IN THE MATTER:

Cause No.: 164 of 2017  
Legal Aid No. LACV/0225/2017

BETWEEN

JUSTIN RAMOON

Plaintiff

And

(1) THE GOVERNOR OF THE CAYMAN ISLANDS  
(2) THE DIRECTOR OF PRISONS  
(3) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Respondents

IN CLOSED SESSION

Appearances: Mr. Paul Bowen Q.C. instructed by Ms. Reshma Sharma, Solicitor  
General and Ms. Claire Allen, Crown Counsel for the Respondents  
Mr. Hugh Southey  
Mr. Ashley Underwood Q.C. appointed as Special Advocate

Before: Hon. Justice Marlene I. Carter Actg.

Decision: 19<sup>th</sup> October 2020

JUDGMENT



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1 PUBLIC INTEREST IMMUNITY



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1. The court has heard submissions from Counsel for both parties as well as the Special Advocate on the desirability of determining the availability of a Closed Material Procedure (CMP) before determining the application for Public Interest Immunity (PII). As has been explored in the first of the rulings arising from the hearing of these issues, this court has ruled on the availability of a CMP in this case and has done so after coming to the conclusion that the PII application and the principles to be applied on such an application should be determined independent of the issue of the availability of a CMP.

█ The First Respondent has produced to the court a PII Certificate dated 30<sup>th</sup> September 2019 which states that in his opinion the documents listed in Schedule 1 attached to the Certificate should be withheld “*on the basis that disclosure of the said material would be injurious to the public interest or otherwise prohibited by law.*” Schedule 1 comprises Part A, documents withheld on PII grounds █  
█

█

█  
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█

5. The Governor went on to detail his knowledge of the basis upon which the Plaintiffs were originally transferred to the United Kingdom in June 2017. He went further to state the reasons why he was in agreement with that assessment after having viewed the documents for which he now asserts public interest immunity.

6. The statutory basis for a PII application is found in the Grand Court Rules (GCR). GCR O.24, r 3 empowers the Grand Court to make an order for discovery and r.14



1 permits the court to inspect documents for which claims to confidentiality or other  
2 grounds to restrict production are made. Rule 14 states as follows:

3  
4 **“Production to be ordered only if necessary, etc. (O.24, r.14)**

5 14. (1) No order for the production of any documents for  
6 inspection or to the Court or for the supply of a copy of any  
7 document shall be made under any of the foregoing rules  
8 unless the Court is of opinion that the order is necessary  
9 either for disposing fairly of the cause or matter or for  
10 saving costs.

11 (2) Where on an application under this Order for  
12 production of any document for inspection or to the Court  
13 or for the supply of a copy of a document privileged from  
14 such production or supply is claimed or objection is made  
15 to such production or supply on the ground that it contains  
16 confidential information or on any other ground, the Court  
17 may inspect the document for the purpose of deciding  
18 whether the claim or objection is valid.”  
19

20 7. On an application for documents to be withheld on the ground of public interest  
21 immunity the court will first review the documents to determine whether they are  
22 *prima facie* disclosable. The court will consider whether the documents that have  
23 been withheld are *prima facie* immune from disclosure on public interest grounds.  
24 The court must then do what is referred to as a balancing exercise - weighing the  
25 necessity of disclosure in relation to each document against the public interest in  
26 non-disclosure. In the case of *Somerville v Scottish Ministers*<sup>1</sup>, the Court stated  
27 thus:

28  
29 “My Lords, we were given to understand that the number of  
30 documents that had been redacted was 70 odd. This was not a case  
31 where trunk loads of documents were involved. The purpose of full  
32 discovery of relevant documents in civil litigation, as of all other  
33 procedural rules and practices, is an administration of justice  
34 reason, namely, to provide as good a chance as is practicable of the  
35 litigation culminating in a just result. It is in the public interest that  
36 a just result should be reached. It is also in the public interest that  
37 documents the disclosure of which would be damaging to the public  
38 interest should be protected from disclosure. These are conflicting  
39 public interests and in every case in which conflict between them  
40 arises one must give way to the other. A balance must be struck  
41 depending on the circumstances of each case and it is the judge who  
42 must strike it. We have come some distance from the days when the  
43 balance used to be struck by the Crown. In order to strike the  
44 balance the judge must weigh up the value of the documents - or

<sup>1</sup> [2007] 1 WLR 2757 at 85

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1 rather, in the present case, the value of the redacted parts - to the  
2 issues for which the applicant seeking disclosure will be contending  
3 in the litigation and the weight of those issues in determining the  
4 outcome of the case. These are the administrations of justice  
5 reasons for disclosure that must go into the balance. And it must be  
6 a rare case in which a judge is able to weigh up these matters  
7 without reading the documents, or perhaps a reasonable selection  
8 of the documents. On the other side of the balance will go the public  
9 interest reasons that have been given for withholding the documents  
10 from disclosure.”  
11

- 12 8. The Respondents have made an application to the Court that documents be withheld  
13 on the ground of public interest immunity and the court must now determine whether  
14 their claim for PII and for the non-disclosure of the documents to which they refer  
15 is justified.  
16

#### 17 DISCLOSURE IN JUDICIAL REVIEW PROCEEDINGS

18

- 19 9. In judicial review proceedings the law has recognized a duty of candour which  
20 subjects a decision maker whose decision is under challenge to make disclosure. In  
21 *R (Bancoult) v Foreign Secretary (No 4) (SC(E))*<sup>2</sup>, it was stated at paras 183-184:  
22

23 “Duty of candour

24  
25 183. *A respondent’s duty of candour in judicial review*  
26 *proceedings is summarised at p 125 of Fordham’s Judicial*  
27 *Review Handbook, 6th ed (2012):*  
28

29 “A defendant public authority and its lawyers owe  
30 a vital duty to make full and fair disclosure of  
31 relevant material. That should include (1) due  
32 diligence in investigating what material is  
33 available; (2) disclosure which is relevant or  
34 assists the claimant, including on some as yet  
35 unpleaded ground; and (3) disclosure at the  
36 permission stage if permission is resisted . . . A  
37 main reason why disclosure is not ordered in  
38 judicial review is because courts trust public  
39 authorities to discharge this self- policing duty,  
40 which is why such anxious concern is expressed  
41 where it transpires that they have not done so.”  
42

- 43 184. *In R (Quark Fishing Ltd) v Secretary of State for Foreign*  
44 *and Commonwealth Affairs [2002] EWCA Civ 1409 at [50]*

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<sup>2</sup> [2016] 3 W.L.R. 157

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 19.10.20.*



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Laws LJ said, “there is a . . . very high duty on public authority respondents, not least central government, to assist the court with full and accurate explanations of all the facts relevant to the issue which the court must decide.” The duty extends to disclosure of “materials which are reasonably required for the court to arrive at an accurate decision”: *Graham v Police Service Commission* [2011] UKPC 46 at [18]. The purpose of disclosure is to “explain the full facts and reasoning underlying the decision challenged, and to disclose relevant documents, unless, in the particular circumstances of the case, other factors, including those which may fall short of public interest immunity, may exclude their disclosure: *R (AHK) v Secretary of State for Home Department (No 2)* [2012] EWHC 1117 (Admin) at [22].”

10. In *Tweed v Parades Commission for Northern Ireland*<sup>3</sup> it was noted that:

“The courts in both jurisdictions developed over a series of decisions an approach to disclosure in judicial review which is more narrowly confined than in actions commenced by writ....

In building upon this foundation the courts developed a restrictive rule, whereby they held that unless there is some prima facie case for suggesting that the evidence relied upon by the deciding authority is in some respects incorrect or inadequate it is improper to allow disclosure of documents, the only purpose of which would be to act as a challenge to the accuracy of the affidavit evidence...”

11. The court explored the reasons for and criticism of that approach and concluded:

“I do consider, however, that it would now be desirable to substitute for the rules hitherto applied a more flexible and less prescriptive principle, which judges the need for disclosure in accordance with the requirements of the particular case, taking into account the facts and circumstances. It will not arise in most applications for judicial review, for they generally raise legal issues which do not call for disclosure of documents. For this reason, the courts are correct in not ordering disclosure in the same routine manner as it is given in actions commenced by writ. Even in cases involving issues of proportionality, disclosure should be carefully limited to the issue which require it in the interests of justice. This object will be assisted if parties seeking disclosure continue to follow the practice where possible of specifying the particular documents or classes of documents they require as E has done in the case before the House, rather than asking for an order for general disclosure.”

<sup>3</sup> [2006] UKHL 53, [2006] All ER (D) 175

*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. - G164/17. Coram: Carter J Actg. Date 19.10.20.*

1 THE RESPONDENTS' ARGUMENTS

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12. The Respondents submit that in the first instance, the documents which are relevant and *prima facie* disclosable are those documents which have been relied upon by the decision maker, which may undermine the Respondents' case or support the Plaintiffs' case and are necessary for disposing fairly of the cause or matter. The Respondents argue that the further limitation on the duty of candour is determined by the fact that the decision maker is required to provide full and accurate explanations of the facts relevant to the issue to be decided, that the duty becomes one of explaining the reasoning behind the decision by way of affidavit and that any underlying material is disclosed only if reasonably required, significant to the decision or referred to by the decision maker's affidavit.

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13. The Respondents submit that the Court should be mindful that because its role in reviewing the decision of the public authority is to determine whether the decision was rational, fair and proportionate and not to substitute its own view on the facts, the Court is not required to find facts and therefore does not need to have all underlying evidence upon which the decision maker made his decision in order to decide whether he acted lawfully; that the extent of disclosure was to be conditioned by the nature of the decision being reviewed as well as the context in which the decision was made.

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14. The Respondents went further to state that even in Bill of Rights cases, disclosure was still to be limited to issues which require it in the interests of justice and that the degree of such disclosure must be determined by the nature of the right engaged and the gravity of the interference with that right. The Respondents put this submission in the following way:

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*“Greater disclosure may be required in cases engaging unqualified rights such as the prohibition on torture (s 3) and more fundamental rights such as the right to liberty s 5 or the right to a fair trial in its criminal aspect (s 7). Less disclosure will be required in cases involving interference with rights that are not of such a fundamental nature such as 7 in its civil aspect or qualified rights like s 9 (private and family life), when disclosure or even a ‘gist’ of the decision-*

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 19.10.20.*

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*makers' reasons may not be necessary, let alone disclosure of the underlying documents."*

15. The Respondents also argue that the material that is both relevant to matters in issue and necessary to dispose fairly of the proceedings has been disclosed pursuant to O.24 r.3 and r. 14 and are in the Plaintiffs' possession.
16. On the instant application, the Respondents submit that the documents that they seek to shield by way of PII are those documents that can be classed as "underlying sensitive material" and they submit that these are documents, the disclosure of which are not necessary because they are neither relevant to any matter in issue nor necessary to dispose fairly of the proceedings as per GCR O.24, r. 3 and r.14 respectively.
17. On the issue of the nature of the documents for which PII is being sought, the Respondents state that the court would in only very rare instances require that all evidence before a decision-maker is disclosed. Further, that the court's proportionality balancing exercise which arises in this case because of the Plaintiffs' arguments involving the Bill of Rights, does not thereby change the court's function which is to review the relevant evidence in order to determine the proportionality of the decision-maker's determination.
18. Disclosure of documentation in a Bill of Rights case should be determined by the nature of the right engaged and the degree of interference alleged tempered by the width of the decision-maker's discretionary area of judgment. The Respondents in effect submit that the nature of the rights that the Plaintiffs allege has been engaged is not of such a fundamental nature to require greater disclosure than in any other judicial review matter and that in such cases even disclosure of a gist of the material may not be necessary.



1 THE PLAINTIFFS' ARGUMENTS

2 19. The Court has had the benefit of submissions from Counsel for the Plaintiff on the  
3 approach to the PII application in this case. Counsel for the Plaintiff recognized that  
4 the court's determination on PII must be whether the public interest in confidentiality  
5 outweighs the interests of justice.<sup>4</sup>

6  
7 20. For the Plaintiffs the importance of the issues in this case where the applications for  
8 Judicial Review are focused on the Bill of Rights was of great relevance. Counsel  
9 for the Plaintiffs referred to s.7(1) and s.26 of the Bill of Rights, emphasizing that  
10 these constitutional provisions support the view that the interests of justice are  
11 particularly powerful in this case where it is alleged that constitutional rights have  
12 been violated unfairly. The Plaintiffs allege that the following rights are being  
13 infringed:

- 14 1. The rights enjoyed by prisoners under section 6.  
15 2. The right to a fair trial protected by section 7.  
16 3. The right to private life protected by section 9.  
17 4. The rights of children protected by section 17.  
18 5. The right to lawful administrative decision making protected by section  
19 19.

20 21. In particular Counsel for the Plaintiffs pointed to the right to have proceedings under  
21 s.26(1) determined. He submitted that this implied that "*PII should rarely or never*  
22 *be upheld if that causes a matter to become un-triable or only triable through a fair*  
23 *process. Such a conclusion would be contrary to the express duty imposed by section*  
24 *26 to determine proceedings.*"<sup>5</sup>

25  
26 22. On the matter of how the Court should consider the public interest in favour of  
27 maintaining confidentiality against the Plaintiffs' arguments, the following  
28 submissions were made:

- 29 a. That the Respondents' apparent reliance on national security should be viewed  
30 with care because if an unjustified claim to be entitled to rely on national security  
31 may suggest an excessively cautious approach to PII.

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<sup>4</sup> The court was referred to the cases of *R v Chief Constable of West Midlands Police ex p Wiley* [1995] 1 AC 274 at 281F

<sup>5</sup> Plaintiffs' skeleton submissions



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- b. That the justification put forward for PII assumes what is in dispute: that the Plaintiffs pose a risk that cannot be managed by the Cayman Islands' Prison Service and other public authorities. That risk is not accepted and may need to be determined at trial.
- c. That sufficient disclosure is required to enable the Court to assess the Respondents' justification fairly especially in light of the express obligation in section 26 to a fair procedure.
- d. That it may be possible to gist materials (particularly with the assistance of a SA). However, even with gisting, disclosure of significant details is likely to be required, particularly if it is concluded that there is no jurisdiction to order a CMP. On this point the court was referred in particular to *Tariq v Secretary of State*<sup>6</sup> and *IR v United Kingdom*.
- e. That ultimately the Court must determine for itself whether the interference challenged is proportionate. When determining that issue, proceedings must be adversarial and for this reason there must be sufficient disclosure to enable the Court to assess the justification in circumstances in which the Plaintiffs are able to make a proper challenge.<sup>7</sup>

23. The Plaintiffs do not accept that there has been sufficient disclosure to this point as in their view the material so far disclosed is not sufficient to enable the Court to conclude that there is sufficient justification for the decision in question, neither will it enable the Plaintiffs to effectively challenge the justification relied on.

24. The Plaintiffs argue that there is nothing in the nature of the material itself that prevents its disclosure and that the only justification for non-disclosure can be the nature of the content of the material and the extent to which it gives rise to risk. The Plaintiffs submit that the Court should be careful to focus on this fact. Also, while the Plaintiffs do not dispute that documents may be withheld on national security grounds or because disclosure will give rise to a risk of serious harm, again the Court should focus on whether this need outweighs the public interest in effective litigation.<sup>8</sup>

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<sup>6</sup> [2012] 1 AC 452  
<sup>7</sup> *Miss Behavin' Ltd v Belfast City Council* [2007] 1 WLR 420.  
<sup>8</sup> The Plaintiffs do not accept that national security applies in the present case nor that the risk of violence should be a powerful consideration.

1       25.     The Plaintiffs submit that in this case the proper application of PII should result in  
2             sufficient disclosure to enable the Court to fully review the justification for the  
3             decisions in question. If, contrary to that submission, the Court concludes that only  
4             limited disclosure is permitted, the Court should still proceed to trial. The Plaintiffs’  
5             ultimate contention being that such a course, if adopted, would have the likely  
6             consequence that the judicial review application should be allowed when the court  
7             considers collectively the Section 26 duty to determine proceedings and the fact that  
8             that if the court assumes interference with the Plaintiffs’ Rights, then the burden is  
9             on the Respondents to justify that interference, on the basis only of the material that  
10            would then be before the court.

11  
12       26.     The Plaintiffs referred to the approach of the European Court of Human Rights, in  
13             **CG v Bulgaria**<sup>9</sup> which held that:

14                                    “... even where national security is at stake, the concepts of  
15                                    *lawfulness and the rule of law in a democratic society*  
16                                    *require that deportation measures affecting fundamental*  
17                                    *human rights be subject to some form of adversarial*  
18                                    *proceedings before an independent authority or a court*  
19                                    *competent to effectively scrutinize the reasons for them and*  
20                                    *review the relevant evidence, if need be with appropriate*  
21                                    *procedural limitations on the use of classified information.*  
22                                    *The individual must be able to challenge the executive’s*  
23                                    *assertion that national security is at stake.”*



24       27.     The Plaintiffs in referring to this authority submit: *“This demonstrates that national*  
25             *security concerns cannot deprive the Plaintiffs of an effective procedure where the*  
26             *court reviews whether there is sufficient justification for an interference with*  
27             *fundamental rights.”*

28  
29       28.     The Plaintiffs further submitted that in consequence of the court having to ensure  
30             that proceedings under section 26 are determined fairly that the court should consider  
31             that it would not be fair for the state to refuse to disclose material on public interest  
32             grounds and then benefit from that non-disclosure. The Plaintiffs argued that the  
33             court should be careful to adopt the presumption of regularity as reflected in **IRC v**  
34             **Rosminster Ltd**<sup>10</sup> to determine the issues on the PII application stating that the

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<sup>9</sup> (2008) 47 EHRR 51 at [40])

<sup>10</sup> [1980] AC 952 at 1009D

1 modern approach tends to have been to limit the scope of the presumption to a  
2 presumption that an unchallenged decision is lawful (*R (Archway Sheet Metal*  
3 *Works) v Secretary of State for Communities and Local Government*<sup>11</sup>).

4  
5 29. Counsel for the Plaintiff went further to state that even if the Bill of Rights was not  
6 in issue the fact that these are judicial review proceedings are also relevant as the  
7 court should seek to ensure that a procedure which seeks to ensure a reasonable and  
8 responsible executive should be effective. The court was referred to the cases of  
9 *Cart*<sup>12</sup> and *Ex parte Bennett*<sup>13</sup> on this point of the court's duty in this regard.

10  
11 **THE ARGUMENTS OF THE SPECIAL ADVOCATE ON PII**

12  
13 30. The Special Advocate made submissions in the closed session on the issue of PII.  
14 The Special Advocate acting as amicus to the Court reminded the court that:

15 *"In practice, most judicial reviews proceed on the basis of examining whether*  
16 *the ministerial submission or officer's report provided a rational basis for the*  
17 *decision, and whether immaterial factors crept in or essential ones were not*  
18 *considered. The Court will not generally consider the raw material on which*  
19 *such reports drew*  
20 *This does not change radically if proportionality or human rights are in play.*  
21 *...The role of the court is still a reviewing one. It may require enhanced scrutiny,*  
22 *and accordingly access to more materials than a conventional judicial review,*  
23 *but the principle remains the same."*

24  
25 31. Specifically, with regard to the basis of the application for PII in this case, the Special  
26 Advocate submitted:

27 [REDACTED]  
28 [REDACTED]  
29 [REDACTED]  
30 [REDACTED]

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<sup>11</sup> [2015] EWHC 794 (Admin) at [44]  
<sup>12</sup> *Cart, R oao v Upper Tribunal (SC(E))* [2012] 1 AC 663  
<sup>13</sup> *Bennett, R v Horseferry Road ex p. Bennett* [1994] 1 AC 42



1 The question for the Court in every instance is whether it should prevent a litigant from  
2 seeing information relied on against him because disclosure would create unacceptable  
3 risk, and the onus of showing that risk is on the Respondents.”  
4

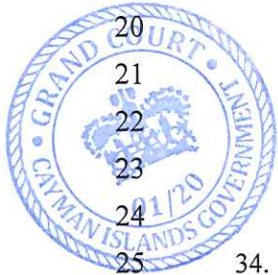
5 32. The Special Counsel also addressed the Plaintiff’s arguments that the Court should  
6 judge whether a particular piece of information should be disclosed based on whether  
7 it is essential for them to know it, the Special Advocate stated as follows:

8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]

15  
16 **THE DOCUMENTS IN RESPECT OF WHICH THE PII APPLICATION IS MADE**

17  
18 33. There are two sets of documents upon which the application is based, and which are  
19 *prima facie* disclosable:

- 20 (i) the material available to the Governor at the time that she
- 21 made the decision to transfer;
- 22 (ii) the Respondent’s unredacted affidavits and the material
- 23 specifically referred to in those affidavits.
- 24



25 34. Of the material that was specifically referred to in the Respondent’s unredacted  
26 affidavits there are documents which were not before the Governor at the time that  
27 she made the decision to transfer (“underlying sensitive material”). The  
28 Respondents have submitted that they do not rely on these documents and they have  
29 been put before this court only for determination of whether it requires that they be  
30 disclosed.

31  
32 [REDACTED] This court has carefully considered the underlying sensitive materials in order to  
33 determine their relevance to the Plaintiffs’ case and whether the nature of the  
34 challenge to the Governor’s decisions outweighs the national security concerns  
35 advanced by the Respondents [REDACTED]

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[REDACTED]

38. I am satisfied that these documents were not themselves before the decision maker at the time that she made the decision under challenge. I do not find that they are relevant in that they neither support the Plaintiff's case nor do they undermine the Respondent's case. These documents are not necessary to dispose fairly of these proceedings.

39. The court must go on to determine whether the documents which are prima facie disclosable should be withheld.

40. As stated above, the Respondents submit that all of the documents which are prima facie disclosable, bar those already disclosed to the Plaintiffs, should be withheld from disclosure. The Respondents' claim for PII rests on the following grounds:

- (i) any facts or documents in the possession of the Governor and communications between the Governor and Secretary of State are *prima facie* privileged;
- (ii) confidential government communications within departments or the Governor's Office and other government departments should be treated as confidential
- (iii) facts or documents may be withheld on national security grounds



1 (iv) any facts or documents may be withheld if disclosure would risk (a)  
2 endangering life; (b) revealing some undercover or other covert source  
3 of intelligence; (c) undermining the prison regime; or (d) compromising  
4 an ongoing criminal or intelligence investigation.  
5

6 41. Each of these grounds has been to varying extents recognized as being such as to  
7 give rise to the application of PII.<sup>14</sup> In every case the court must look to the  
8 circumstances and facts of the individual application.  
9

10 **NATIONAL SECURITY**

11 42. There is no issue that the first Respondent is entitled to claim that there is sensitive  
12 material in this case which should be withheld from the Plaintiffs as he has done by  
13 the issuance of the PII Certificate. In this instance the risk to national security  
14 encompassed the risk that the defendants may try to escape from HMP Northward.  
15 This was the assessment of the First Respondent. There is no question that a court  
16 should not seek to undermine the executive's assessment on matters such as national  
17 security because it is recognized that such assessment will be based on facts for  
18 which the decision maker has special knowledge or a special responsibility as it  
19 relates to that area for which in this case he is uniquely responsible.  
20

21 43. I am mindful of the Plaintiffs' arguments that an unjustified claim to be entitled to  
22 rely on national security may lead to an excessively cautious approach to disclosure  
23 of the materials and that while national security is in issue and relevant it should not  
24 be determinative given the nature of the litigation in this case and also that the court  
25 must assess whether the material that the Respondents seek to keep from being  
26 disclosed is genuinely national security material. The Plaintiffs point to the fact that  
27 some of the matters complained of as showing good reason for considering the  
28 Plaintiffs a national security threat evidence only what has been referred to as  
29 ordinary criminality.  
30

31 44. The Special Advocate has noted that the court should consider when looking at the  
32 issue of national security and PII that "Whether criminality is so serious or is so  
33 narrowly directed as to amount to a threat to national security will be a matter of fact

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<sup>14</sup> Secretary of State v Rehman [2003] 1 AC 153; Balfour v FCO [1994] 1 WLR 681; Whittaker v Waller [1996 CILR 378; McCormick Re [2017] NIQB 65

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1 and degree. But it does not matter since PII is about public interest, which is not  
2 restricted to national security.”

3  
4 45. In the case of Secretary of *State v Rehman*<sup>15</sup>, the court was concerned with the  
5 Secretary of State’s determination of whether the appellant’s deportation was  
6 conducive to the in the public good in the interests of national security. Lord Slynn  
7 of Hadley stated thus with regard to such determination:

8  
9 *“It seems to me that the appellant is entitled to say that “the interests of national*  
10 *security” cannot be used to justify any reason the Secretary of State has for*  
11 *wishing to deport an individual from the United Kingdom. There must be some*  
12 *possibility of risk or danger to the security or well-being of the nation which the*  
13 *Secretary of State considers makes it desirable for the public good that the*  
14 *individual should be deported.”*

15  
16  
17 46. Lord Sleyne stated later in his judgment:

18 *“In conclusion even though the Commission has powers of review both of fact*  
19 *and of the exercise of the discretion, the Commission must give due weight to*  
20 *the assessment and conclusions of the Secretary of State in the light at any*  
21 *particular time of his responsibilities, or of Government policy and the means at*  
22 *his disposal of being informed of and understanding the problems involved. He*  
23 *is undoubtedly in the best position to judge what national security requires even*  
24 *if his decision is open to review. The assessment of what is needed in the light of*  
25 *changing circumstances is primarily for him.”*

26  
27 This latter approach is the one that the Respondents invite the Court to take.

28  
29 **THE PROTECTION, DETECTION AND INVESTIGATION OF CRIME AND THE PROTECTION OF**  
30 **THE PUBLIC AND PRISON SECURITY**

31  
32 47. On the matter of the protection, detection and investigation of crime and the  
33 protection of the public, the Respondents argue that the Court should not order  
34 disclosure unless it is sure that it will not disclose the identity of an informant or  
35 other police investigative method. The Respondents also cited the risk to third  
36 parties’ lives in this case as being present and continuing. They submit that many of  
37 the documents cannot be disclosed because it will put third parties at a real and  
38 immediate risk.

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15 [2003] 1 AC 153

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 19.10.20.*

1 48. The Respondents point to the fact of the Plaintiffs' criminal conviction for a gang  
2 related murder and a previous conviction by the Plaintiff Ramoon for possession of  
3 an imitation firearm. They point to the manner in which the murder was committed  
4 as being bold and in front of numerous witnesses and to the allegation against the  
5 Plaintiff Douglas that he attacked Justin Ebanks, a witness against the Plaintiffs at  
6 trial, while both were detained at HMP Northward in September 2016.

7  
8 **PROTECTION OF POLICE INFORMANTS**  
9

10 49. In *Rogers v Gaming Board* Lord Reid stated:

11  
12 *“Here are very unusual features about this case. The board require the fullest*  
13 *information they can get in order to identify and exclude persons of dubious*  
14 *character and reputation from the privilege of obtaining a licence to conduct a*  
15 *gaming establishment. There is no obligation on anyone to give information to*  
16 *the board. No doubt many law-abiding citizens would tell what they know even*  
17 *if there was some risk of their identity becoming known, although many perfectly*  
18 *honourable people do not want to be thought to be mixed up in such affairs. But*  
19 *it is obvious that the best source of information about dubious characters must*  
20 *often be persons of dubious character themselves. It has long been recognised*  
21 *that the identity of police informers must in the public interest be kept secret and*  
22 *the same considerations must apply to those who volunteer information to the*  
23 *board. Indeed, it is in evidence that many refuse to speak unless assured of*  
24 *absolute secrecy.*  
25 *The letter called for in this case came from the police. I feel sure that they would*  
26 *not be deterred from giving full information by any fear of consequences to*  
27 *themselves if there were any disclosure. **But much of the information which***  
28 ***they can give must come from sources which must be protected and they would***  
29 ***rightly take this into account. Even if information were given without naming***  
30 ***the source, the very nature of the information might, if it were communicated***  
31 ***to the person concerned, at least give him a very shrewd idea from whom it***  
32 ***had come.”**<sup>16</sup>  
33*

34 50. To some extent the mischief referred to by Lord Reid is akin to that the Respondents  
35 states justifies their application for any documentation which could disclose  
36 informants to be withheld.

37  
38 [REDACTED] I bear in mind the submissions of the Special Advocate on this point, that there is no  
39 principle that the identity of informants can never be disclosed. However, the Special  
40 Advocate did acknowledge that [REDACTED]  
41 [REDACTED]

16 [1973] AC 400-401

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[REDACTED]

**CONFIDENTIAL GOVERNMENT COMMUNICATIONS**

53. The parties have each invited the court to consider carefully the cases of *Conway v Rimmer*<sup>17</sup> and *Whittaker v Waller*<sup>18</sup>. In *Whittaker v Waller* the learned Chief Justice (Harre C.J.) found for the applicants who sought disclosure of certain documents for which the Chief Secretary had claimed public interest immunity. The applicant claimed that the documents were vital to his action, while the Chief Secretary stated that it was necessary in the public interest to withhold them because they belonged to a class of documents the disclosure of which might in future affect candour in personnel matters and thus impair the proper functioning of the public service.

54. The Learned Judge found that the public interest in promoting the administration of justice outweighed the possible harm to the public service from disclosure and rejected the argument that public servants were likely to become less candid in their communications if disclosure were permitted.

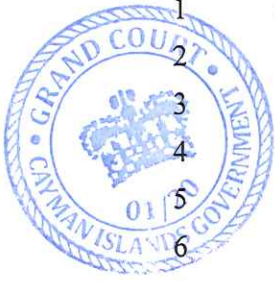
55. The Cayman Islands Court of Appeal (CICA) upheld this decision and affirmed that the Chief Justice was correct to heed the principles stated in *Conway v Rimmer*:

*“The documents in this appeal do not relate to high policy nor can they be regarded as high-level documents. In my view, the withholding of the documents is not necessary for the proper functioning of the public service.”*



<sup>17</sup> [1968] AC 910  
<sup>18</sup> [1996] CILR 378

*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. - G164/17. Coram: Carter J Actg. Date 19.10.20.*



1 56. In the present case this Court can assess whether the documents which fall within  
2 this aspect of the application can fall easily into the categorization such as that  
3 employed in the case of *Air Canada v Trade Secretary (No 2)*<sup>19</sup> and consider whether  
4 these categorizations are useful in determining how they should affect the balance  
5 which the court must undertake between the Plaintiff's entitlement and the claim for  
6 PII.

7  
8 57. The court has on this application considered carefully the cases of *Air Canada v*  
9 *Trade Secretary (No 2)*; *Conway v. Rimmer* and *Burmah Oil Co. Ltd. v. Bank of*  
10 *England*<sup>20</sup>.

11  
12 **THE BALANCING EXERCISE**

13 58. The Court's task at this point is to determine whether the documents that have been  
14 withheld have been so withheld in the public interest, that the claim for PII has been  
15 properly made.<sup>21</sup> In so doing the Court must assess the documents themselves  
16 bearing firmly in mind the interests of justice which favours disclosure against the  
17 public interest asserted by the Respondents in this case.

18  
19 59. Counsel for the parties and the Special Advocate have been especially helpful with  
20 their submissions and have extensively explored the many factors that this court must  
21 consider on this balancing exercise.

22  
23 *The extent of any disclosure already made:*

24  
25 60. This court notes that pursuant to the duty of candour the Respondents have disclosed  
26 redacted copies of submissions that were made by the Governor to the Secretary of  
27 State seeking removal of the Plaintiffs to the United Kingdom, as well as a gist of  
28 the allegations upon which the decision to transfer the Plaintiffs were made. The  
29 gist outlines as follows:

30 *"... compelling intelligence showing that while*  
31 *incarcerated at HMP Northward the Plaintiffs continued to*  
32 *orchestrate gang-related activities including conspiracy to*  
33 *murder, the smuggling of drugs, firearms and hitmen into*

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<sup>19</sup> [1983] 2 A.C. 394

<sup>20</sup> [1980] AC 1090

<sup>21</sup> *Somerville v Scottish Ministers* [2007] 1 WLR 2757; *Balfour v Foreign Office* [1994] 1 WLR 681

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. - G164/17. Coram: Carter J Actg. Date 19.10.20.*



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*Cayman, the smuggling of drugs into HMP Northward and the making of threats against prison staff and assaults on other inmates. (see redacted affidavit 3, para 9))*

*... reported intelligence linking them both to intimidation and manipulation of staff, threats of violence to staff, and to reports of plans to escape and the use of weapons. (redacted affidavit 1, para 5).*

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61. The Plaintiffs submit that this gist is not sufficient because any summary of the documents relied upon may be distorted and that the document itself is the best evidence. The Respondents have also disclosed other documents to the Plaintiffs and during the course of these arguments in some instances agreed to disclose copies or gists of other documents. These matters are referred to in the Judicial Review Bundle at letter “D” and include emails, submissions, and conviction records.

*The nature of the documents:*

62. The Respondents submit that these are all documents relating to national security and the protection of individuals and are highly sensitive in nature.

*The nature and importance of what is at stake for the Plaintiffs.*

63. The plaintiffs assert an infringement of a right under the Bill of Rights. The nature of the challenge should lean toward greater disclosure.

*The nature of the Right that has been engaged:*

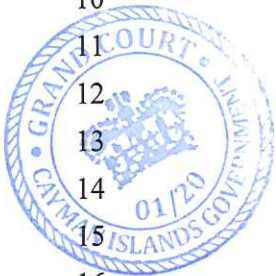
64. Where the right is more fundamental, the court should lean to greater disclosure. When the right alleged to be infringed is less fundamental, the extent of disclosure may be less.

*The availability of additional safeguards: eg. a Special Advocate may lean toward less material being disclosed.*

65. The Respondents submit the following:  
  
i. *“The sensitivity of the underlying material is of the highest order...Some of this material cannot be disclosed regardless of the factors weighing in favour of disclosure.”*

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 19.10.20.*



- 1                   ii. *“There has been sufficient disclosure to put Ps on notice of the reasons and*  
2 *evidence for R1”s decision...there has been sufficient disclosure of the*  
3 *withheld material by way of ‘gist’ to enable them to give effective*  
4 *instructions to the Special Advocate if a CMP were to be held and going*  
5 *beyond what is required by s 9.”*  
6                   iii. *“...it is not accepted that any of this material is likely to provide ‘substantial*  
7 *support’ to Ps’ case on any of the grounds [of challenge]”*  
8                   iv. *“...while Rs accept that their [Ps’] detention in the UK will cause an*  
9 *interference to their right to family life beyond what will occur if they were*  
10 *imprisoned in the Cayman Islands it is a necessary consequence of Ps’ own*  
11 *criminal conduct and the nature of the risk that they present....R’s accept*  
12 *that as a matter of common law natural justice ...Ps’ are entitled to basic*  
13 *procedural safeguards... But these are not of such an order to justify the*  
14 *Court ordering disclosure of material to which PII would otherwise attach.”*  
15                   v. *As above at (4).*  
16                   vi. *“There are alternatives to disclosure of material to which PII should attach*  
17 *if the Grand Court finds it has no jurisdiction to order a CMP.”*  
18

19       66.       Against these arguments the Plaintiffs emphasize that the Court must have firmly in  
20       mind the imperative for a fair trial for these Plaintiffs. The court is mindful of the  
21       arguments set out at paragraph 20 above with respect to the Section 26 of the  
22       Constitution, wherein the Court’s duty to determine proceedings should weigh  
23       against a finding of PII where to do so would cause the matter to become untriable.  
24       I remind myself of the further factors on the Plaintiffs’ behalf set out at paragraphs  
25       22-28 above.

26  
27       67.       The court has considered in particular the arguments by both sides on the extent of  
28       necessary disclosure. While the Respondents’ arguments is essentially that all  
29       material that should be provided to the Plaintiffs has already been disclosed, the  
30       plaintiffs contend that what has been disclosed is not sufficient and submit that the  
31       proper application of PII should result in sufficient disclosure to enable the Court to  
32       fully review the justification for the decisions in question. In order to do so the  
33       Plaintiffs concede that it may be possible to gist materials but maintain that even  
34       with gisting, disclosure of significant details is likely to be required, particularly if it



1 is concluded that there is no jurisdiction to order a CMP as this court has now  
2 concluded.

3  
4 68. In the case of *Tariq v Secretary of State*<sup>22</sup> the claimant, employed by the Home  
5 Office brought an action for discrimination on the grounds of his race and religious  
6 beliefs after his security The Home Office obtained orders under the Employment  
7 Tribunals Rules of Procedure 2004 so that much of the evidence on which it intended  
8 to rely would not be disclosed to the claimant or his advisers, and claimant and his  
9 advisers were to be excluded from the proceedings when closed evidence was being  
10 given or closed documents considered on national security grounds. At the hearing  
11 the claimant argued that his Right to a fair and public hearing under Article 6 of the  
12 European Convention for the Protection of Human Rights and Fundamental  
13 Freedoms was incompatible with the closed hearing proposed. While the tribunal  
14 did not agree that this right was infringed by the proposed procedure, it made a  
15 declaration that he was entitled to be provided with sufficient detail of the allegations  
16 being made against him to enable him to make an effective challenge to them.

17  
18 69. Lord Mance when he addressed the Home Office's appeal against the Tribunal Order  
19 stated the issue to be determined:

20  
21 *"The appeal raises the question whether there is an absolute requirement*  
22 *that a claimant should himself or herself see and know the allegations*  
23 *forming the basis of the state's defence in sufficient detail to give*  
24 *instructions to the defence legal team to enable the allegations to be*  
25 *challenged effectively."*  
26

27 70. After finding that the general nature of the case against the claimant had already been  
28 disclosed to him, the HL held on the appeal:

29  
30 *"...there was no absolute requirement that the detail of allegations, which would*  
31 *be disclosed in normal litigation, should be disclosed where the interests of*  
32 *national security required secrecy; that the disadvantage to the claimant, which*  
33 *would to some extent be mitigated by the procedure adopted, was outweighed by*  
34 *the paramount need of the Home Office to protect the integrity of the security*  
35 *vetting process; that, further, the general nature of the Home Office's case had,*  
36 *in fact, already been communicated to the claimant; and that, accordingly, the*  
37 *declaration requiring the claimant to be provided with sufficient detail of the*  
38 *allegations against him to enable him to give instructions on them would be set*  
39 *aside.*  
40

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<sup>22</sup> [2012] 1 AC 452

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. - G164/17. Coram: Carter J Actg. Date 19.10.20.*

1 71. I am mindful that in Tariq the Employment Tribunal Rules of Procedure allowed for  
2 a Closed Material Procedure to be adopted.

3  
4 72. In *IR v United Kingdom*, the Court was concerned with the decision of the Secretary  
5 of State for the Home Department to exclude two foreign national from the United  
6 Kingdom on grounds that their presence in the country was not conducive to the  
7 public good. The Secretary of State submitted that the decisions were taken on  
8 grounds of national security. At the hearing of the applicants' appeals against these  
9 decisions before the Special Immigration Appeals Commission (SIAC), part of the  
10 proceedings took the form of a closed procedure where the applicants and their legal  
11 representatives were absent but special advocates who had been appointed to  
12 represent their interests.

13  
14 73. The applicants complained that their exclusion from the United Kingdom and the  
15 proceedings before SIAC violated their rights under Articles 8 and/or Article 13 of  
16 the Convention. The court summed up the appellants' case in this way:

17 *"The core of the applicants' case is that Article 8 required more specific*  
18 *information to be provided as to the nature of the allegations against them and*  
19 *the purported threat to national security that they posed. In order to succeed,*  
20 *the applicants must establish that the procedural guarantees under Article 8*  
21 *required such information to be disclosed in the circumstances of their cases."*<sup>23</sup>

22  
23 74. The Court referred to its findings in other cases of challenges brought under Articles  
24 5 and 6 of the Convention where the court found that general assertions were  
25 insufficient based on the need for detailed information in the context of cases arising  
26 those Articles stating that this reflected the fact that

27 *"what is at stake in such proceedings is a person's liberty, and that the*  
28 *fundamental principle is that everyone has the right to liberty and security*  
29 *of person unless one of the specified exceptions applies..."*

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31 75. The court noted:



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<sup>23</sup> At paragraph 59



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*“By contrast, Article 8 does not guarantee aliens the freedom to enter or reside in the country of their choice ... and their right to respect for private and family life is qualified by Article 8 § 2, which specifically envisages exceptions for reasons of national security. It follows that the procedural guarantees inherent in Article 8 of the Convention will vary depending on the context of the case in question and in some circumstances may not be as demanding as those which apply under Articles 5 and 6.”*

In the instant case where the alleged infringement of the Plaintiffs’ rights relate to their right to family life, the Court’s observations are pertinent.

76. In *IR v United Kingdom* although the Court found against the appellants, the Court recognized that their finding was supported by other “procedural safeguards, sufficient for the purposes of Article 8 in the procedure adopted before SIAC.<sup>24</sup> I am mindful that in *Tariq* the Employment Tribunal Rules of Procedure allowed for a Closed Material Procedure to be adopted. The procedure referred to can be considered as one akin to a Closed Material Procedure.

**OUTCOMES**

77. The Court has now heard full submissions on PII both in the open session and in the closed session where the Special Advocate was able to advance arguments to aid the Court’s determination. The result of the Court’s deliberation and consideration of the documents for which PII has been claim are attached to this judgment. The Respondents maintain that the court, if it finds that there is material that cannot be disclosed because of the success of the PII application, should order a CMP in fairness to the Plaintiffs as being the avenue through which this court can ensure that the Plaintiffs have access to the documents through the use of a Special Advocate.

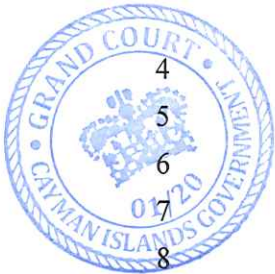
78. Having now determined that this Court does not have the legislative authority to order a Closed Material Procedure, and noting the Court’s findings in *Tariq and IR v United Kingdom*, this factor leads this court to find that it must lean toward greater disclosure, *if possible*, even as it considers that PII has been claimed on the main

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<sup>24</sup> At paragraph 63

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. – G164/17. Coram: Carter J Actg. Date 19.10.20.*



1 ground of national security. However, I also note the conclusions of Mr. Justice  
2 Ouseley in *AHK v Secretary of State [2013] EWHC 1426 (Admin)* a case in which  
3 a CMP was found not to be available.

4 *“The Claimants have been able to bring judicial review proceedings in respect*  
5 *of the decisions. They have been able to test the position by reference to the*  
6 *evidence which is admissible by the application of the PII test, which they said*  
7 *should be applied. The evidence relied on by the SSHD has been tested to see if*  
8 *the PII claim was made out. The Court then has to consider the claim in the light*  
9 *of what emerges from that process.”*

10 79. It is clear to this court’s mind that the determination that there is no Closed Material  
11 Procedure available in this case does not thereby mean that this must be the  
12 overriding factor in its consideration of the principles governing its discretion on a  
13 PII application or that this is a factor which carries inordinate weight in the balancing  
14 exercise that this court must undertake.

15  
16 80. The court notes the Plaintiffs position that even if limited disclosure is made after  
17 this PII exercise is concluded they submit the matter should still proceed to trial.

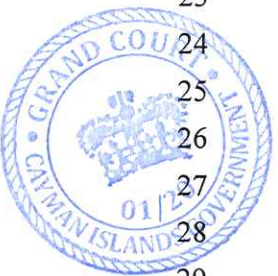
18  
19 81. I am satisfied that of the materials from the redacted affidavits that may have been  
20 referred or may have been before the Governor at the time she made the decision,  
21 some of these have been disclosed to the Plaintiffs. Others material which may have  
22 been referred to in the unredacted affidavits and for which gists or copies have not  
23 been ordered disclosed by this court are documents properly not disclosed and are  
24 properly to be PII protected.

25  
26 82. With regard to those documents for which legal privilege have not been claimed but  
27 where PII is sought as being communications between the Governor’s Office and  
28 other confidential government communications within Departments, it is apparent to  
29 this court that these documents have been included with the application for Public  
30 Interest Immunity because they related specifically to the transfer of the Plaintiffs.  
31 These are documents that should be regarded as high-level documents on the  
32 *Conway v Rimmer and Whittaker v Waller* scale for that reason. These were not  
33 routine communications and are properly to be PII protected.

1 83. The risk to third parties and informants in this matter is high. This court must be  
2 careful to ensure that the disclosure of the identity of persons who provided  
3 information to the police of the Plaintiffs activities will not result in them being  
4 harmed. The risk to those persons outweighs the need for disclosure especially in  
5 those instances when, as this court has concluded, the information that will be  
6 withheld as a result will not advance the Plaintiffs case in any material way. These  
7 are matters the disclosure of which could lead to the identity of informants.

8  
9 84. [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]

18  
19 85. While the result of the PII exercise has led to a significant number of documents  
20 being withheld from disclosure, the nature of the challenge brought by the Plaintiffs  
21 does lead this Court to the view that the Plaintiffs should now view the further  
22 documents which are to be disclosed arising from the PII exercise and they should  
23 be able to proceed to trial on those matters if any where there is a realistic prospect  
24 of the Court being able to decide the case. The observations of the Mr. Justice  
25 Ouseley in *AHK v Secretary of State [2013] EWHC 1426 (Admin)* are pertinent in  
26 this regard and the court would ask the parties to take a robust view of how the matter  
27 will now proceed. The Respondents will need time to comply with the Court's  
28 orders for disclosure as per the Schedule of Documents for which PII is Sought set  
29 out below, and to decide whether they will rely on any of the documents for which  
30 orders for disclosure have now been made. They will have 14 days in which to do  
31 so.



32  
33 **SCHEDULE OF DOCUMENTS FOR WHICH PII IS SOUGHT**

34  
35 86. The format below is adopted with a view to avoiding the description of the  
36 documents as far as possible

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*Judgment. Douglas (Osbourne) v The Governor of the Cayman Islands and The Director of Prisons - G155/17; Ramoon (Justin) v. The Governor of the Cayman Islands, The Director of Prisons and the Attorney General of the Cayman Islands. - G164/17. Coram: Carter J Actg. Date 19.10.20.*

| DOCUMENT NUMBER         | GROUND ON WHICH PII SOUGHT   | DETERMINATION  |
|-------------------------|--|--|
| ID 1 – 30 PII material. | Documents were not considered by the decision maker and therefore not part of the underlying documentation/National security | These documents are not to be disclosed in the interest of national security.  |
| Documents 31-38         | legal privilege/national security.   | A gist of most of this material has already been disclosed to the Plaintiffs and that no further disclosure should now be ordered. There is no prejudice to the Plaintiffs as nothing in the materials can assist the Plaintiffs with regard to fairness considerations. |
| Document 39             | PII  | Gist proposed by the Special Advocate to be disclosed with the final sentence of that proposed gist redacted.  |
| Document 40             | Legal Privilege  | The document is a legally privileged document and is not to be disclosed.  |
| Document 41             | PII  | This document has already been disclosed to the Plaintiffs   |
| Document 42             | Risk to informants/Open investigation  | This document is part of an ongoing investigation which may be compromised by its disclosure/Risk to informant   |
| Document 43             | Risk to informants/Open investigation  | This document is part of an ongoing investigation which may be compromised by its disclosure/Risk to informant   |
| Document 44             | Risk to informants/ Open investigation   | This document is part of an ongoing investigation which may be compromised by its disclosure/Risk to informant   |
| Document 45             | Risk to informant/ongoing open investigation   | The Document is to be served in redacted form with all names removed. The First line of the 1 <sup>st</sup> email to be disclosed, all other text redacted. The Last line of the 2 <sup>nd</sup> email is to be redacted.  |





|             |  |  |
|-------------|--|--|
| Document 46 | Prison Security                                  | A copy of a redacted document is to be disclosed, redacted to protect prison security. All names are to be removed and the first two paragraphs to be disclosed. All other parts of document redacted. |
| Document 47 | Risk to Third Party                              | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.  |
| Document 48 | Risk to Third Party                              | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.  |
| Document 49 | Risk to Third Party                              | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.  |
| Document 50 | Risk to Third Party                              | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.  |
| Document 51 | Risk to Third Party                              | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.  |
| Document 52 | Risk to Third Party                              | Document to be disclosed in redacted form [may be by way of affidavit as proposed by the Respondents]  |
| Document 53 | Protection, detection and investigation of crime | Document to be disclosed in redacted form with all Names removed.  |
| Document 54 | Protection, detection and investigation of crime | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation.  |
| Document 55 | Risk to Third Party – Prison Security            | A gist of this document is to be disclosed limited to the finding of the password protected cell phone   |



|             |  |   |
|-------------|--|---|
| Document 56 | Risk to Third Party/ Protection, detection and investigation of crime                            | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation.         |
| Document 57 | Risk to Third Party/ Protection, detection and investigation of crime                            | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party. |
| Document 58 | Risk to Third Party/ Protection, detection and investigation of crime                            | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party. |
| Document 59 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 60 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 61 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 62 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 63 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 64 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 65 | Risk to Third Party – Prison Security  | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |

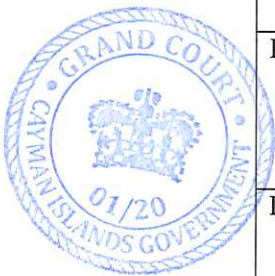


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| Document 66 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 67 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 68 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 69 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 70 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 71 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 72 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party. |
| Document 73 | Risk to Third Parties/Informant  | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party. |
| Document 74 | Risk to Third Parties/Prison Security  | The Court is satisfied that this document may be disclosed in redacted form [may be by way of an affidavit as suggested by the Respondents]   |
| Document 75 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |



|             |  |   |
|-------------|--|---|
| Document 76 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 77 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 78 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party. |
| Document 79 | Protection, detection and investigation of crime   | Not to be disclosed. The court is satisfied that the facts to which this document relates are already disclosed to the Plaintiffs             |
| Document 80 | Protection, detection and investigation of crime   | Not to be disclosed. The court is satisfied that the facts to which this document relates are already disclosed to the Plaintiffs             |
| Document 81 | Risk to Third Party  | A gist of this document is to be disclosed stating the fact that a phone was seized from the Plaintiff OD                                     |
| Document 82 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | A gist of this document is to be disclosed. Names redacted.   |
| Document 83 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | A gist of this document is to be disclosed. Names redacted.   |
| Document 84 | National Security - Confidential information   | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national security.                         |
| Document 85 | Risk to Third Parties/Informant  | The Court is satisfied that these documents are part of an ongoing investigation which may be compromised by their disclosure.                |
| Document 86 | Risk to Third Party  | The court is satisfied that the facts to which this document relates are already disclosed to the Plaintiffs.                                 |

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| Document 87 | Risk to Third Parties/Informant/Prison Security  | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation.                        |
| Document 88 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 89 | Risk to Third Party/ Protection, detection and investigation of crime/Ongoing open investigation | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 90 | Ongoing open investigation/Prison Security   | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 91 | Ongoing open investigation/Prison Security   | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 92 | Ongoing open investigation/Prison Security   | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 93 | Ongoing open investigation/Prison Security   | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 94 | Ongoing open investigation/Prison Security   | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 95 | Ongoing open investigation/Prison Security   | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation and/or prison security. |
| Document 96 | Ongoing open investigation/Prison Security   | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |



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| Document 97  | National Security – Prison Security | The relevant facts related in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]                                   |
| Document 98  | National Security – Prison Security | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation and/or prison security. |
| Document 99  | National Security – Prison Security | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation and/or prison security. |
| Document 100 | National Security – Prison Security | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation and/or prison security. |
| Document 101 | National Security – Prison Security | The Court is satisfied that this document is not to be disclosed because its disclosure would reveal/compromise police investigation and/or prison security. |
| Document 102 | National Security – Prison Security | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]               |
| Document 103 | National Security – Prison Security | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit [as suggested by the Respondents]               |
| Document 104 | Legal Privilege                     | The document is a legally privileged document and is not to be disclosed.  |
| Document 105 | Risk to Third Parties               | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted.                        |
| Document 106 | Risk to Third Parties               | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted.                        |



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| Document 107 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.  |
| Document 108 | Risk to Third Party                    | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.                |
| Document 109 | Risk to Third Party                    | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.                |
| Document 110 | Risk to Third Party                    | The Court is satisfied that the relevant facts in these documents are to be disclosed by means of an affidavit with all names redacted.                      |
| Document 111 | Risk to Third Party                    | The Court is satisfied that the relevant facts in these documents are to be disclosed by means of an affidavit with all names redacted.                      |
| Document 112 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.  |
| Document 113 | National Security                      | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national security and/ or present a risk to a third party |
| Document 114 | National Security                      | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national security.  |
| Document 115 | National Security                      | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national security.  |
| Document 116 | National Security – Sensitive material | The Court is satisfied that this document is not relevant to the decision in this case. Not to be disclosed  |
| Document 117 | National Security – Sensitive material | The Court is satisfied that this document is not relevant to the decision in this case. Not to be disclosed  |



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| Document 118 | National Security – Sensitive material | The Court is satisfied that this document is not relevant to the decision in this case. Not to be disclosed                           |
| Document 119 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 120 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 121 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 122 |  | The court is satisfied that this document has already been disclosed to the Plaintiffs.   |
| Document 123 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 124 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 125 | Confidential Communications            | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted. |
| Document 126 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 127 | Confidential Communications            | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted. |
| Document 128 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 129 | Confidential Communications            | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted. |
| Document 130 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |
| Document 131 | Legal Privilege                        | The document is a legally privileged document and is not to be disclosed.   |



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| Document 132 | Confidential information            | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted.                               |
| Document 133 |                                     | The court is satisfied that this document has already been disclosed to the Plaintiffs.   |
| Document 134 | Confidential information            | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted.                               |
| Document 135 | Risk to Third Parties/ Informant    | The Court is satisfied that this document is not to be disclosed because its disclosure would constitute a significant risk to a third party.                       |
| Document 136 | Legal Privilege                     | The Court is satisfied that this document is to be disclosed, all names redacted.   |
| Document 137 |                                     | The Court is satisfied that this document has already been disclosed to the Plaintiffs.   |
| Document 138 | Legal Privilege                     | The Court is satisfied that this document is to be disclosed, all names redacted.   |
| Document 139 |                                     | The Court is satisfied that this document is not relevant to the decision in this case. Not to be disclosed   |
| Document 140 | Risk to Third Party/Prison Security | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national/prison security and/or present a risk to a third party. |
| Document 141 | Prison Security                     | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national/prison security and/or present a risk to a third party. |
| Document 142 | Confidential Information            | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit         |



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| Document 143 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |
| Document 144 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |
| Document 145 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |
| Document 146 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |
| Document 147 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |
| Document 148 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |
| Document 149 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |
| Document 150 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit. |
| Document 151 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit  |



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| Document 152 | Legal Privilege          | This document is legally privileged documents and is not to be disclosed.   |
| Document 153 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |
| Document 154 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |
| Document 155 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |
| Document 156 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |
| Document 157 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |
| Document 158 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |
| Document 159 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |
| Document 160 | Confidential Information | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit |



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| Document 161 | Confidential Information               | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit          |
| Document 162 | Confidential Information               | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit          |
| Document 163 | Confidential Information               | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit          |
| Document 164 | Confidential Information               | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit          |
| Document 165 | Confidential Information               | The Court is satisfied that this document is not relevant to the decision in this case. The Respondents to reveal a summary of its contents in an affidavit          |
| Document 166 | Legal Privilege                        | This document is legally privileged documents and is not to be disclosed.  |
| Document 167 | Risk to Third Party/Informant          | The Court is satisfied that this document is not to be disclosed because its disclosure may present a risk to a third party.   |
| Document 168 |  | This document is to be disclosed to the Plaintiffs.  |
| Document 169 | National Security – Sensitive material | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national/prison security and/or compromise police investigations. |
| Document 170 | National Security – Sensitive material | The Court is satisfied that this document is not to be disclosed because its disclosure could harm national/prison security and/or compromise police investigations. |



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| Document 171 | Protection, detection and investigation of crime/                           | The court is satisfied that this document contains relevant information which should be disclosed to the Plaintiffs by means of an affidavit.   |
| Document 172 | Protection, detection and investigation of crime/                           | The court is satisfied that this document contains relevant information which should be disclosed to the Plaintiffs by means of an affidavit.   |
| Document 173 |   | The court is satisfied that these documents have been disclosed to the Plaintiffs   |
| Document 174 |   | The court is satisfied that these documents have been disclosed to the Plaintiffs   |
| Document 175 | Risk to Third Parties/Informant   | The court is satisfied that a gist of these documents can be disclosed to the Plaintiffs.   |
| Document 176 | Risk to Third Parties/Informant   | The court is satisfied that a gist of these documents can be disclosed to the Plaintiffs.   |
| Document 177 | Risk to Third Parties/Informant   | The court is satisfied that a gist of these documents can be disclosed to the Plaintiffs.   |
| Document 178 | Risk to Third Parties/Informant   | The court is satisfied that a gist of these documents can be disclosed to the Plaintiffs.   |
| Document 179 | Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that this document should not be disclosed as is part of an ongoing investigation which may be compromised by its disclosure and that it may constitute a significant risk to a third party. |
| Document 180 | Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that this document should not be disclosed as is part of an ongoing investigation which may be compromised by its disclosure and that it may constitute a significant risk to a third party. |





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| Document 181 | Risk to Third party   | The Court is satisfied that the relevant facts in this document are to be disclosed by means of an affidavit with all names redacted.   |
| Document 182 | Risk to Third Party/ Informant  | The Court is satisfied that these documents should not be disclosed as they are part of an ongoing investigation which may be compromised by their disclosure and that it may constitute a significant risk to a third party. |
| Document 183 | Risk to Third Party/ Informant  | The Court is satisfied that these documents should not be disclosed as they are part of an ongoing investigation which may be compromised by their disclosure and that it may constitute a significant risk to a third party. |
| Document 184 | Protection, detection and investigation of crime/Ongoing open investigation | The Court is satisfied that these documents should not be disclosed as they are part of an ongoing investigation which may be compromised by their disclosure and that it may constitute a significant risk to a third party. |
| Document 185 | Legal Privilege   | This document is a legally privileged document and is not to be disclosed.  |

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**THE REDACTED AFFIDAVITS**

**87. 1<sup>ST</sup> REDACTED AFFIDAVIT**

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| Parag 22         | The Court is satisfied that the contents of this paragraph are not to be disclosed.                     |
| Parag 26         | The Court is satisfied that the contents of this paragraph are not to be disclosed.                     |
| Parag 35 and 38: | The Gist suggested by the Special Advocate is to be disclosed. No time indicated, source or methodology |
| Parag 73:        | The Court is satisfied that the contents of this paragraph are not to be disclosed.                     |

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88. 2<sup>ND</sup> REDACTED AFFIDAVIT

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| Parag 6:     | The Court is satisfied that the contents of this paragraph are not to be disclosed as to do so may present a significant risk to a third party.  |
| Parag 14:    | The Court is satisfied that the contents of this paragraph are not to be disclosed as to do so may present a risk to an ongoing investigation.   |
| Parag 18-24: | The Court is satisfied that the contents of these paragraphs are not to be disclosed as to do so may present a risk to national/prison security. |

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89. 3<sup>RD</sup> REDACTED AFFIDAVIT

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| Parag 3.2 | The Court is satisfied that the contents of this sub paragraph are to be disclosed   |
| Parag 5   | The Court is satisfied that the contents of this paragraph are not to be disclosed.  |
| Parag 7   | The Court is satisfied that the contents of this paragraph are to be disclosed   |
| Parag 13  | The Court is satisfied that the contents of this paragraph are not to be disclosed as to do so may present a risk to an ongoing investigation. |
| Parag 15  | The Court is satisfied that the contents of this paragraph are not to be disclosed as to do so may present a risk to an ongoing investigation. |
| Parag 16  | The Court is satisfied that the contents of this paragraph are not to be disclosed as to do so may present a risk to an ongoing investigation. |
| Parag18   | The Court is satisfied that the contents of this paragraph are not to be disclosed as to do so may present a risk to an ongoing investigation. |
| Parag 19  | The Court is satisfied that the contents of this paragraph are not to be disclosed as to do so may present a risk to an ongoing investigation. |
| Parag 20  | The final sentence of this paragraph is to be disclosed  |
| Parag 25  | The Court is satisfied that the contents of this paragraph are not to be disclosed.  |
| Parag 26  | The gist of this paragraph suggested by the Special Advocate is to be disclosed.   |
| Parag 27  | The Court is satisfied that the contents of this paragraph are to be disclosed, save 27.2 and 27.4.  |
| Parag 29  | The Court is satisfied that the contents of this paragraph are not to be disclosed.  |
| Parag 34  | The Court is satisfied that the contents of this paragraph are not to be disclosed.  |
| Parag 35  | The Court is satisfied that the contents of this paragraph are not to be disclosed.  |

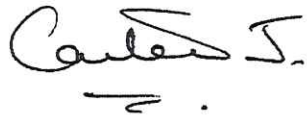


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| Parag 37     | The Court is satisfied that the contents of this paragraph are not to be disclosed. |
| Parag 38     | The Court is satisfied that the contents of this paragraph are not to be disclosed. |
| Parag 43.2   | The Court is satisfied that the contents of this paragraph are not to be disclosed. |
| Parag 43.3   | The Court is satisfied that the contents of this paragraph are not to be disclosed. |
| Parag 43.3.3 | The Court is satisfied that the contents of this paragraph are not to be disclosed  |
| Parag 46     | The Court is satisfied that the contents of this paragraph are not to be disclosed  |
| Para 52      | The contents of this paragraph are to be disclosed.                                 |

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90. Save as referred to above, any documents exhibited to any of the redacted affidavits are not to be disclosed.

**Dated this the 19<sup>th</sup> day of October 2020**




**HON. JUSTICE MARLENE I. CARTER**  
**JUDGE OF THE GRAND COURT (ACTG.)**