



Neutral Citation Number: [2026] CIGC (Civ) 3

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

**Cause no: G 2024-0285 and G 2024-0312
(Consolidated Proceedings)**

**IN THE MATTER OF SECTION 11(3) OF THE LEGAL AID ACT 2015
AND IN THE MATTER OF AN APPEAL AGAINST THE DECISION OF THE DIRECTOR OF
LEGAL AID DATED 1 OCTOBER 2024**

AND

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

**THE KING
(on the application of KEITH MYERS)**

Applicant

AND

DIRECTOR OF LEGAL AID

Respondent

IN CHAMBERS

Appearances: Mr. Nicholas Dixey of Nelsons Attorneys for the Appellant
Mr. Ben Tonner KC of McGrath Tonner for the Respondent

Before: Hon Justice Marlene Carter

Heard: 5 November 2025

**Decision
Handed Down:** 12 January 2026

**Draft written Ruling
circulated:** 19 January 2026

**Written Ruling
Delivered:** 21 January 2026

[2026] CIGC (Civ) 3 Myers v Director of Legal Aid – Ruling

Civil Procedure - Legal Aid Act (2015 Revision), Sections 7 (1) and 11 - Director's power to remove attorney from List for professional misconduct

RULING

The Proceedings

1. Section 7 (1) of the Legal Aid Act [“the Act”] states:

“7 (1) *The Director shall continue to maintain a list of attorneys-at-law who are in active private practice in the Islands, and who have notified the Director that they are able and willing to represent applicants and assisted persons*” [hereinafter “the List”]

2. By letter dated 1 October 2024, the Director informed the appellant / applicant (hereinafter “the appellant”) that he was to be removed from the List, pursuant to Section 11(1) of the Act, such removal to take effect on the 15th of October 2024. By way of originating motion in G2024-0285, the decision was appealed to a Judge in Chambers pursuant to section 11(3) of the Act.
3. The remedy provided by Section 11(3), if an appeal is successful, is reinstatement to the List. The Act does not provide a remedy in damages. The appellant alleges that as a result of the decision to remove the applicant from the List, he has suffered significant loss of income due to his inability to accept new legal aid instructions or to act as duty counsel.
4. In G2024-0312, the appellant filed an application for leave for judicial review of the Director's decision to lift the stay of her inquiries, which the appellant alleged the Director had put in place since on or about the 27 June 2024, and to remove Mr. Myers from the List. The appellant seeks an award of damages on the judicial review claim.
5. By Order dated 12 May 2025, Kawaley J. granted the application for leave to apply for judicial review. Subsequently, it was accepted by the Court (with the consent of the parties) that the relevant facts and the legal principles in respect of both these matters overlap and the two Grand Court actions referred to above were consolidated.
6. This ruling is in respect of the extent of the Director's powers under Section 11(1) of the Act to remove the appellant from the List in light of the circumstances as outlined below.

The relevant factual background.

7. The appellant is an attorney-at-law whose practice has consisted almost exclusively of criminal legal aid work. The appellant was first admitted to the List in 2018. He has represented legally aided clients at all levels in the courts of the Cayman Islands.
8. The appellant represented Ms. Aisha English on a legal aid certificate from the time of her arrest and at her criminal trial. She was convicted at trial and sentenced to a term of imprisonment. Ms. English appealed her conviction to the Cayman Islands Court of Appeal (the “CICA”). Before the CICA, Ms. English alleged that the appellant had acted in a sexual manner towards her and that he had not properly prepared her case. The applicant filed an affidavit before the Court of Appeal denying the allegations in their entirety.
9. Subsequent to the filing of the appellant’s affidavit, Ms. English provided the Court of Appeal with WhatsApp messages between herself and the applicant. On the 25 April 2024 the CICA overturned Ms. English's conviction. In its written judgment in CICA #17 of 2023, the Court of Appeal found that the contents of the applicant’s affidavit, in the face of the WhatsApp messages, raised serious issues requiring investigation by the police. In its judgment the Court noted:

“This is a very troubling case. On the face of it, Mr. Myers' conduct was indefensible. The contents of his affidavit in the face of the WhatsApp messages raises very serious issues which require investigation by the police. We direct the Director of Public Prosecutions to ensure this matter is taken forward. Moreover, the contents of this judgment need to be drawn to the attention of the authorities with responsibility for the professional conduct of advocates both in the Cayman Islands and in England and Wales.”
10. On 04 June 2024 the Director wrote to the appellant stating that she had considered, inter alia, the CICA’s judgment, the appellant’s affidavit to the Court and the WhatsApp messages submitted by Ms. English. The Director stated that she was considering removing the appellant from the List *“due to serious concerns that you have acted in a professionally questionable and potentially unlawful manner in a matter in which you appeared on legal aid.”* The director invited the appellant to respond.
11. On 18 June 2024, the appellant’s attorneys responded to the Director indicating that they were taking instructions on the substance of the Director’s concerns. The Director was invited to stay her

inquiry pending the outcome of any disciplinary proceedings under the Legal Practitioner's Act ("LPA").

12. In her letter to the appellant of 04 June 2024 the Director indicated that she would provide her decision in writing within seven business days of receiving the appellant's reply. That time frame would have expired on or about the 27 June 2024. The Director did not provide a decision as indicated. The appellant indicates that he proceeded on the basis that the Director had granted the stay sought by his attorneys.
13. On 23 July 2024 the Honorable Chief Justice wrote to the appellant regarding his professional conduct further to the CICA judgment. Between August and September there were communications between the Director and appellant on issues related to the status of previously assigned legal aid matters.
14. On 01 October 2024 the Director wrote to the appellant informing him of her decision to remove him from the List within 14 days. The Director advised that this decision was final, and the appellant was directed to his right of appeal under the Act. The Director indicated then that she had had regard to new allegations in addition to the matters previously referred to in her letter of 04 June 2024. The Director did not provide details of these new allegations. For the purposes of this appeal the Director concedes that she did not give the appellant an opportunity to respond to the new allegations referred to in her letter of 01 October 2024.
15. As a result of the Director's decision the appellant has not been granted any further legal aid certificates or permitted to act as duty counsel from 15 October 2024 to date.

The appellant's submissions

16. Counsel submitted on behalf of the appellant that an attorney facing a complaint of professional misconduct has significant protections. He referred to sections 7 and 8 of the LPA and to the procedure for disciplining attorneys set out in Order 67 rules 9-13 of the Grand Court Rules as well as Practice Direction 5 of 2022.
17. Counsel submitted that these fundamental protections are in place to ensure that an attorney has a fair hearing and that such protections applied to all attorneys, regardless of their chosen practice area. It would be absurd, counsel argued, if these standards of protection were, in effect, lower (or nonexistent) for those in criminal practice reliant upon legal aid instructions. However, this would

be the effect if the Director is found to have acted within her powers under Section 11. Counsel submitted further: “*It would be an equally absurd outcome if the Director could effectively stop an attorney from accepting legal aid briefs by dint of his professional misconduct, but that same attorney would nevertheless be able to continue to ply his trade in the criminal or other courts on a private retainer.*”

18. Counsel contends that the Act gives the Director no express power to initiate or adjudicate upon allegations of professional misconduct against legal aid attorneys as a basis of removing them from the List. Counsel contends that if the Director had such an onerous responsibility, it would be expressly provided for, and there would be a procedure prescribed. Counsel argues that if the Director has such power to remove for professional misconduct, these procedures would have had to have the character of proceedings under the foregoing provisions in the LPA or Practice Direction 5 and Order 67.
19. Referring specifically to Sections 7 and 11 of the Act, counsel for the appellant submits that:
 - (i) Section 7 (1) contains the “*statutory criteria*” governing an attorney’s admission to the List and as such the Director’s power to remove an attorney from the List under section 11 is confined to instances where an attorney ceases to satisfy the statutory criteria.
 - (ii) Apart from Section 7 (1), the Director’s functions under that section are administrative, and do not include any power to discipline legal aid attorneys or remove them as a sanction for misconduct. Therefore, unlike the procedures under the Grand Court Rules and the Practice Direction for LPA sanctions, there is no procedure under the Act, nor the rules or regulations thereto, for the discipline of legal aid attorneys by the Director.
 - (iii) If the Director has legitimate concerns about an attorney’s conduct or competence, because she is precluded from removing an attorney for any other reason than those which go to the statutory criteria; she may do no more than refer the matter to the Chief Justice, raising the concerns or making a complaint of professional misconduct.
 - (iv) If the Director referred a matter to the Chief Justice, regarding concerns about an attorney’s conduct or competence, she must permit said attorney to remain on the List in the interim.

- (v) The appellant at all material times continued to satisfy the Statutory Criteria to remain on the List – he was in active private practice and was willing and able to accept legal aid briefs.

The appellant’s counsel further submitted:

“It is outside the Director’s proscribed functions to initiate disciplinary proceedings against Mr Myers for professional misconduct, make findings in that regard, and to impose removal from the List as a sanction. If she had concerns relating to an attorney’s professional conduct, the correct course was to report them to the Honourable Chief Justice. If substantiated after the proscribed procedure is followed, the attorney may be struck or suspended from the Roll by a judge, which would inevitably justify removal from the List.”

The Director’s submissions.

20. Counsel for the Director submits that the Director does have the statutory power to add or remove attorneys from legal aid work on competence or conduct grounds. Counsel submitted that the following can be discerned from Section 7 (1):
- (i) The Director has a duty to keep a list of practicing attorneys who are willing and able to represent applicants and assisted persons.
 - (ii) the duty to maintain the list is an ongoing one. As such, the Director must keep the List under review, and this must include the power to add or remove attorneys from the List from time to time.
 - (iii) for an attorney to be admitted to, or permitted to remain on, the List, said attorney must be in active private practice in the Islands.
 - (iv) For an attorney to be admitted to, or to remain on, the List, an attorney must have notified the Director that they are able and willing to represent applicants and assisted persons.
21. Counsel for the Director makes the following points in response to the appellant’s submission that it is the two latter points that constitute the statutory criteria to determine admission to, and continuance on the List and the implications of limiting the Directors concerns under Section 11(1) to only these matters:
- a. That this would constitute an overly strict reading of section 7, as it precludes any objective assessment of whether an attorney is willing and able to represent applicants and assisted

- persons; the only requirement would be that the attorney gives *notice* that they are willing and able to do so.
- b. Such a strict reading of section 7 is incorrect because it would mean that any attorney in active private practice would be *entitled* to admission to the List at their whim or fancy, irrespective of their actual suitability or experience.
 - c. Similarly, such an interpretation would restrict the Director’s power under section 11 to whether (a) the attorney is in active private practice and (b) he has given the Director *notice* of his willingness and ability to act.
 - d. The Appellant by inviting the view that the Director may also consider whether an attorney could be removed for other reasons including whether the attorney “*had been otherwise incapacitated from properly discharging his duties a result of deterioration of mental capacity etc*” suggests a recognition by the appellant that there must be an objective assessment of the attorney’s suitability, and that the applicant attorney’s subjective view of their own suitability is not the end of the enquiry.
 - e. The word “able” in section 7 speaks to competence and conduct. *It denotes possession of the skill, capacity, and means necessary to perform the task properly.* “Ability” by this definition *must necessarily encompass both technical competence and the ethical integrity essential to the proper discharge of the attorney’s obligations in this role.*
 - f. It is further submitted that if the Director must consider competence as a factor when admitting or deciding to allow an attorney to remain on the List under section 7, then competence must also be a relevant consideration in the exercise of the Director’s power of removal under section 11.
22. As an alternative argument, it was submitted that this court determines that section 7 cannot be read so broadly as to infer an objective test of competence, then it should find that the removal power under section 11 must not be limited to the factors in section 7(1).
23. In support of this alternative approach, it is argued that the term “*concerns*” in section 11(1), on a natural reading of the section, means matters of interest or importance to the issue of whether an attorney’s name should be removed from the List. It is submitted that its usage by the draftsman anticipates that the Director may be confronted with a variety of situations, which may not be easily anticipated in advance, but which might reasonably cause her to re-evaluate whether an attorney should remain on the List and hence the use of what counsel for the Director referred to as an “*unrestrictive, flexible and open-ended term*” as being apt to cover a broad range of circumstances.

24. It is further submitted that if the Legislature had intended the restrictions of Section 11 (1) by Section 7, as advanced by the appellant, it would have said so expressly.
25. The court was invited to consider the statutory context, that of ensuring that persons who cannot afford a lawyer receive competent and effective representation, supports this wider power of removal granted to the Director. Similarly, such an interpretation is consistent with a purposive approach to construction. Counsel submitted that *“The Director’s power to maintain a list of competent attorneys is essential to maintain public confidence in the scheme. An absence of oversight in the provision of legal aid would be antithetical to the purposes of the Act.”*
26. It was submitted further that even if section 11 were ambiguous in its scope, it would be appropriate to imply the power to remove an attorney for competence and/or conduct reasons. To this end, Section 9 (c) authorizes the Director to do all things necessary, incidental, or conducive to achieving the Act’s purpose.
27. The court, it was argued, must consider the effect of denying the Director the ability to remove an attorney for serious professional failings. The Director would be compelled to retain practitioners on the List who are incompetent, dishonest, or unwilling to comply with legal aid guidelines. The Court was reminded of the presumption against absurdity. It would be absurd, counsel contends, and contrary to common sense if the Director could not remove for lack of competence or for failings in professional integrity or ethics.
28. Counsel for the Director invited the court to reject the argument that the Director cannot remove attorneys from the List for misconduct because it is only the Chief Justice that possesses disciplinary jurisdiction over attorneys. It was argued that the Chief Justice and the Director have distinct purposes.
29. Regarding the appellant’s argument that, even if the court finds that the Director has the statutory power to remove an attorney on conduct grounds, the Director failed to observe principles of natural justice in exercising that power in relation to the appellant, the Director maintains that she gave the appellant ample opportunity to respond to the concerns and the evidence referred to by her in the letter of 04 June 2024.

30. Counsel submitted that the Director followed the principles of natural justice in relation to the 4 June 2024 concerns, and having regard to the statutory safeguards in section 11 of the Act, she was entitled to find that:
- a. the WhatsApp messages between Mr. Myers and Ms. English showed that their relationship improperly crossed the boundary line between professional and personal, and
 - b. the WhatsApp messages, read together with Mr. Myers' affidavit to the Court of Appeal, demonstrate that Mr Myers lied to the Court of Appeal.
31. The Director submits that she was entitled to conclude that Mr. Myers should be removed from the List on one or both of those grounds.
32. The Director concedes that, in her 1 October 2024 letter, she did not adequately particularize, nor did she give Mr. Myers an adequate opportunity to respond to the “*new*” concerns relating to legal aid defendant “*R.W*”. The Director accepts she was wrong to take such new matters into account without giving Mr. Myers a reasonable opportunity to respond but argues that her decision was nevertheless correct, and procedurally fair, in relation to the matters concerning the representation of Aisha English.
33. Counsel for the Director invited this court to affirm that section 11 empowers the Director to remove attorneys for misconduct or incompetence and to reject the Appellant's contention that, when faced with incompetence or misconduct, the Director's only recourse is to refer the matter to the Chief Justice.

Court's considerations and conclusions

34. The Act is an essential statutory provision within the legislative landscape which provides avenues to justice in the Cayman Islands. The Act's purpose is to provide legal aid to persons in respect of civil and criminal matters where those persons are financially unable to secure legal services from their own resources. By these means, the Act seeks to ensure representation for people who would otherwise be deprived of access to justice.
35. The Director is charged with achieving the balance between what is envisioned and what allocated resources can deliver.

36. The Director's principal functions are those stated in Section 7(1) of the Act:

Section 7:

“7 (1) The Director shall continue to maintain a list of attorneys-at-law who are in active private practice in the Islands, and who have notified the Director that they are able and willing to represent applicants and assisted persons.

(2) The Director may prepare rosters of such attorneys-at-law for the more efficient administration of this Law and such rosters shall also include rosters for attorneys-at-law who are willing to carry out services as duty counsel which services include —

- (a) interviewing and advising persons being questioned or detained at police stations or who are charged with criminal offences in the circumstances set out in section 14; and*
- (b) carrying out other duties as are prescribed.*

(3) The Director shall receive and consider every application for legal aid made under section 15 and, subject to the following provisions of this Law and any regulations, shall grant a certificate to an applicant in any proper case, with or without provision for payment of contributions by the applicant.

(4) The Director, deputy director and legal aid counsel shall provide legal representation and give legal advice in such civil matters and in such circumstances as are approved by the Court Administrator, after consultation with the Chief Justice.

(5) Subject to the directions of the Court Administrator, the Director shall be responsible for the day-to-day administration of this Law.”

37. Section 11 states the following regarding the Director's powers of removal from the List referred to at Section 7(1).

11. (1) The Director may, after supplying an attorney-at-law with concerns which could result in his name being removed from the list and giving him a reasonable opportunity and time to respond to such concerns, remove an attorney-at-law from the list prepared pursuant to section 7.

(2) Where the Director removes an attorney-at-law from the list under subsection (1), he shall provide him with written reasons for the removal.

(3) When an attorney-at-law is removed from the list pursuant to subsection (1), he may appeal the removal to a Judge in Chambers, who may order the reinstatement of the attorney-at-law.

(4) *A decision under subsection (3) shall be final.*”

38. At issue is the nature and extent of the Director’s concerns which may result in the Director removing an attorney from the List. As set out in the written submissions on behalf of the Director when the Director moved to remove the appellant from the list she acted as she did because she concluded (i) that the WhatsApp messages between the appellant and Ms. English showed that their relationship improperly crossed the borderline between professional and personal and (ii) that the WhatsApp messages, read together with the appellant’s affidavit to the CICA demonstrate that the appellant lied to the Court of Appeal. The Director determined that the appellant’s professional conduct, as above, necessitated his removal from the list despite the appellant’s indication of his ability and willingness to continue on the List.
39. Section 11(1) does not give the Director an express power to investigate and make findings regarding the professional conduct of attorneys. The procedure governing the investigation of allegations/complaints of professional misconduct is provided by Section 7 of the LPA.

“7. Suspension and striking off Roll

7. (1) *A judge shall have power, for reasonable cause shown, to suspend any attorney- at-law from practising as such during any specified period or to order the attorney-at-law’s name to be struck off the Court Roll.*
- (2) *Before a judge takes such action as is laid down in subsection (1) hereof, the judge shall communicate or cause to be communicated in writing to the attorney-at-law concerned the nature of the complaint against that attorney-at- law and such attorney-at-law shall be entitled to call witnesses and to be heard.*
- (3) *A judge may, if the judge thinks fit, at any time, order the Clerk of Court to replace on the Court Roll the name of an attorney-at-law whose name had been struck off the Roll.”*

40. Section 8 of the LPA gives “(A)ny attorney-at-law aggrieved by a decision or order of a judge made under section 7(1) the right to appeal therefrom to the Court of Appeal”.
41. Practice Direction 5 of 2022 details further procedures regarding discipline of attorneys-at-law under Section 7 (1) of the LPA.

[2026] CIGC (Civ) 3 Myers v Director of Legal Aid – Ruling

“1. By virtue of section 7(1) of the Legal Practitioners Act (“LPA”), Judges of the Grand Court are vested with the authority, for reasonable cause shown, to suspend an attorney-at-law from practicing or to order that his or her name be struck off the Court Roll.

.....

3. This Practice Direction explains the procedure which will be engaged when a disciplinary complaint is made against an attorney. The procedure will involve the Chief Justice as head of the Judiciary and the Attorney General (the latter as *ex officio* head of the legal profession of the Cayman Islands pursuant to section 25 of the Grand Court Act (2015 Revision) and as representative of the Crown in the Courts in all matters in which rights of a public character come into question).
4. When a complaint about the conduct of an attorney is received, whether from a judge, a client of that attorney, another attorney or a third party, it shall be referred to the Chief Justice. The Chief Justice will consult with the Attorney General and consider whether, *prima facie*, the conduct described in the complaint may warrant the commencement of proceedings under Section 7 of the LPA in the public interest. If, after consultation with the Attorney General, the Chief Justice considers that there is no case to answer this will be communicated to the complainant and no further steps will be taken.
5. If the Chief Justice, after consultation with the Attorney General, is of the view that there is a *prima facie* case against the attorney, the Chief Justice (if necessary with assistance of the Attorney General or his designate) will consider the charges to be made against the attorney and will afford the attorney an opportunity to explain in writing within 14 days (or such longer period as the Chief Justice shall provide) why the charge(s) should not be pursued.”

42. The procedure allows for trial if the matter is taken forward, where the burden and standard of proof is to the criminal standard. Order 67 PART 2 rules 9 - 13 also encapsulate complimentary procedures surrounding disciplinary proceedings against attorneys.

[2026] CIGC (Civ) 3 Myers v Director of Legal Aid – Ruling

43. Counsel for the Director described the procedure in Section 11 of the Act as one that was supervised by statutory safeguards and common law processes and protections, encompassing as it does the Director's statutory duty to identify the concerns which could result in the attorney's name being removed from the List, granting the attorney a reasonable opportunity and time to respond to such concerns; the usual public law requirements that should guide the Director's decision-making process, the Director's statutory duty to give written reasons for the removal and the availability of the statutory appeal mechanism.
44. However, these stand starkly against the statutory provisions governing the regulation of attorneys and their conduct, evidenced by Section 7(1) of the LPA, Order 67, Rules 9-13 and Practice Direction 5 of 2022, which can be described as detailed and elaborate. Nothing of the sort is seen in the procedure for addressing the Director's concerns under Section 11(1) of the Act. Instead, the procedure is more informal in nature with the Director as the sole and final arbiter. Professional disciplinary proceedings are generally the opposite of informal with procedures being fully and expressly stated to ensure clarity of purpose and consequence at each stage, reflecting the nature and seriousness of the exercise. The more informal nature of the provision at Section 11(1) leans against it being a procedure to judge an attorney's professional misconduct. The complex statutory procedures referred to above also lend support to the narrower interpretation of the Director's powers under Section 11(1) as they concern discipline for professional misconduct.
45. There are other instances in the Act wherein an attorney can be removed from the List. Pursuant to section 12, a listed attorney may decline to provide services, and a stated procedure must be followed. Section 13 details circumstances in which a listed attorney may withdraw his/her services after a matter has been assigned by grant of a legal aid certificate. Where an attorney withdraws from an assigned case without notice the Act states at 13 (5): "*An assigned attorney-at-law who withdraws his services without giving notice to the Director commits an act of professional misconduct and is liable to be disciplined in accordance with the provisions of the Legal Practitioner's Law...*".
46. The assigned attorney's action at Section 13(5) is deemed by the provision to be an instance of professional misconduct. The determination of whether the circumstances of the withdrawal are sufficient to amount to professional misconduct is not left to the Director's discretion. Neither is the Director charged with disciplining the assigned attorney. Instead, the assigned attorney is disciplined in accordance with the provisions of the LPA. It is relevant to note that even where the

[2026] CIGC (Civ) 3 Myers v Director of Legal Aid – Ruling

assigned attorney is referred to disciplinary action the Act does not empower the Director to remove the attorney from the List. These provisions lend support to a view that if a matter of professional discipline, deemed as such by the statute itself, makes express provision for such a matter to be dealt with in accordance with the provisions for professional discipline under the LPA, without express provision in the Act granting the Director the power to act, assess and discipline for professional misconduct such a power should not be inferred.

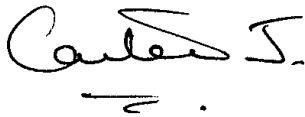
47. It is instructive that the Court of Appeal did not itself make a finding of misconduct in CICA #17 of 2023. Neither did the court seek to impose a sanction against the appellant. Instead, the judgment of the court was that “*the contents of its judgment*” be drawn to the attention of relevant authorities charged with “*responsibility for the professional conduct of advocates both in the Cayman Islands and in England and Wales*”. The court determined that there were serious issues which required further investigation. The CICA went no further than that, although it was the judgment of the CICA which in large part resulted in the decision of the Director to make a finding of professional misconduct and to remove the appellant from the List.
48. The Director is a creature of statute, that statute being the Legal Aid Act. It has been argued that The Act does not state that the Director may only refer disciplinary matters to the Chief Justice. If that is what the Legislature intended, it would have said so. However, this omission should be viewed differently. It is the fact that the Act does not expressly give the Director the power to make a determination of professional misconduct or to sanction for same that is the crucial point. This is the matter that must carry the greater imperative. For if this matter, the determination of allegations or complaints of professional misconduct against attorneys, is of such grave importance that it requires the complex provisions and procedures of at least three (3) statutory provisions, it can only follow that if the Director was charged with the same remit, within the “concerns” of Section 11(1), the Legislature would have so clearly stated. When this is coupled with the fact that there is an instance within the Act itself at Section 13(5) which refers to and directs the usage of set procedures for professional misconduct, this lends support to the power to discipline not residing with the Director.
49. The Director’s powers under 7(1) are largely administrative. They are in no way judicial. An assessment of professional misconduct of an attorney is at least semi-judicial as the procedures under the LPA attest. I agree with the submissions of counsel for the appellant that if the Director can be found to have the power to remove for misconduct under Section 11 of the Act, it could

create a situation whereby an attorney could be removed from the List by the Director on such a ground but remain in active private practice. The confusion which may result should not be countenanced especially as it relates to matters of professional discipline. An attorney at law should have certainty surrounding how complaints or allegations of professional misconduct are dealt with. It appears to this court that separate, and seemingly distinct procedures could not be the goal of the legislature.

50. Section 11(1) specifically relates to the removal of an attorney from the List. The concerns to which that section refers, and about which the Director may have cause to write to a listed attorney must relate to the stated prerequisites for an attorney to be admitted to the List as stated in Section 7(1). They must be concerns that relate to the ability and willingness of the listed attorney to represent clients and assisted people and whether such attorney remains in active private practice in the Islands.
51. A finding of professional misconduct has serious implications for an attorney: professional, economic and reputational. A finding adverse to an attorney has a direct effect on whether an attorney can remain on the List. If an attorney were suspended or struck from the Court Roll pursuant to Section 7 (1) of the LPA, the attorney would no longer satisfy the criteria of being able to legally represent clients or of being in active private practice in the Islands.
52. The Director is correct to state that the Chief Justice's disciplinary power regulates the right to practise generally while the Director's power governs eligibility for publicly funded work. The two functions do serve different purposes and address different mischiefs. However, in the arena of discipline the Chief Justice's power must trump that of the Director. If the Director refers a matter of concern to the Chief Justice, this does affect the Director's operational duty to protect aided clients and the public purse. A referral in such circumstances must be seen as part of that duty. The Director should act promptly to do so where the Director forms the view that an attorney's conduct jeopardizes client's interests, and the integrity and operation of the legal aid system.
53. The Director acted within her powers in raising her concerns to the Attorney. It would have been within her remit to transmit these concerns to the Honourable Chief Justice if she apprehended that these were matters which lay outside of an attorney's ability and willingness and moved instead into matters of professional misconduct and which were matters she apprehended could influence her grant of a legal aid certificate. However, to go further to make a determination as she did was to go one step too far. The Director has overstepped. I agree with the submission of counsel for

the Director that it would be absurd and contrary to common sense if the Director could not remove, as in the instant case, for failings in professional conduct, integrity, or ethics. The Director would be entitled to remove an attorney from the List on that ground. This court's findings do not take away from her ability and power to do so. It only makes plain that the Director is not the arbiter in such matters. The Director does not have the remit to make a final assessment and determination of such conduct.

54. The appeal in cause G 2024-0285 is allowed and the appellant shall be reinstated to the List.
55. This court shall hear further submissions from counsel as to the implications of this ruling to the additional relief sought in the judicial review, and the costs of the proceedings.



Hon. Mrs. Justice Marlene Carter
Judge of the Grand Court