



**Neutral Citation Number: [2025] CIGC (Civ) 18**

**Cause No: G 2024-0103**

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

**CIVIL DIVISION**

**BETWEEN:**

**THE KING**

**(On the application of CARIBBEAN UTILITIES COMPANY, LTD.)**

**Applicant**

**-and-**

**THE CAYMAN ISLANDS OMBUDSMAN**

**Respondent**

**-and-**

**UTILITY, REGULATION AND COMPETITION OFFICE**

**Interested Party**

**Appearances:** Mr Chris Buttler KC of counsel, Andrew Jackson and Zuhair Farouki of Appleby (Cayman) LLP for the Applicant

Mr Tom Lowe KC of counsel and Vaughan Carter of Savannah Law for the Respondent

The Interested Party was not represented and did not attend

**Before:** The Honourable Justice Jalil Asif KC

**Heard:** 14 and 22 April 2025

**Judgment:** 22 May 2025

*Judicial review—application to adduce further evidence in response—whether GCR O.53, r.6(4) applicable—whether to permit further evidence under inherent jurisdiction*

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## JUDGMENT

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### A. Introduction

1. By a summons filed on 3 April 2025, the Respondent in the proceedings seeks leave to file and rely upon further evidence in response to this application for judicial review, which is listed to be heard on 4-6 June 2025. For the reasons set out in this judgment, I have decided that she should be given leave to do so.
2. The application for leave to pursue the judicial review was filed as long ago as April 2024. The decision sought to be challenged is the Respondent's determination of an appeal against the outcome of a request for disclosure of certain documents under the Freedom of Information Act. The FOIA request was made to the Interested Party, who refused the request. On 5 February 2024, the Respondent allowed the appeal against the Interested Party's decision and ordered that the documents should be disclosed.
3. The Applicant contends that the Respondent's decision on the appeal is open to challenge on four grounds:
  - 3.1 it was procedurally unfair in that the Applicant was not given a fair opportunity to participate in the appeal – the Applicant says that it should have been permitted to do so because the documents in question were its documents and contained its commercially sensitive information;
  - 3.2 the decision was based on a factual error on the part of the Ombudsman as to the level of involvement of the Applicant in certain of the Interested Party's activities;
  - 3.3 the decision was irrational or illegal because the Respondent made findings that were not founded on evidence, she failed to ask and answer the right questions, she made contradictory findings, and she failed to recognise that her decision that the documents should be disclosed would result in an actionable breach of confidence; and

3.4 the decision interferes with the Respondent's constitutional right to peaceful enjoyment of its property without compensation or is disproportionate.

**B. Background**

4. The case has had an unfortunate procedural history, with significant delays in its progress towards a hearing, which are no fault of the parties. Due to difficulties in listing the final hearing before about October 2025, the matter was transferred to me in March 2025. I was able to offer hearing dates in June 2025, which the parties accepted.

5. Until the issue arose that has generated the Respondent's summons, the parties had worked together cooperatively to prepare the matter for a hearing on the basis of a timetable set out in a proposed directions order agreed between them, albeit the court had not approved that draft order.

6. The parties therefore filed and served their primary evidence and the Applicant's evidence in reply, and there are no complaints on either side about that, although some extensions of time were sought and agreed during that process. The Respondent's evidence was filed and served on 28 November 2024. On 16 December 2024, the Applicant circulated a draft Amended Notice of Motion for agreement by the Respondent. The Applicant's evidence in reply was then filed and served on 15 January 2025. The Respondent did not object to the Applicant's proposed amendments to the Notice of Motion, and no objection was taken on either side to the content of the filed evidence.

7. On 17 March 2025, the Respondent indicated that it wished to adduce further evidence in response to certain aspects of the Applicant's evidence in reply. The Applicant did not consent and the parties corresponded regarding the intended content of this evidence. The affidavits of the two witnesses in question, who are not connected with the Respondent, were sworn on 26 and 28 March 2025. I was told by Mr Lowe KC, who appeared for the Respondent, that due to an oversight the affidavits were not provided to the Applicant until 14 April 2025, the morning of the hearing of the summons.

**C. Analysis and decision**

8. As well as being subject to the general provisions of the Grand Court Rules, including the overriding objective as set out in the Preamble, judicial review applications are subject to a specific regime set

out in GCR O.53. GCR O.53, r.6 deals with the evidence to be filed, served and relied upon at the hearing of an application for judicial review.

9. Mr Buttler KC, who appears for the Applicant, argues that GCR O.53, r.6(4) bars the Respondent from relying on any evidence that is not filed within the 56-day period referred to in that rule. He relies on my previous judgment in the case of *The King (otao Soto) v Police Service Commission* (unreported, 31 May 2024) and the recent Court of Appeal decision in *IBC v CIMA* [2025] CICA (Civ) 7.
10. However, in my judgment, the situation before me is not catered for by GCR O.53, r.6(4) or by GCR O.53, r.6 more generally. GCR O.53, r.6(1) requires that the statement in support of the application for leave must be served upon the respondent with the notice of motion. GCR O.53, r.6(2) is as follows:

*“(2) The Court may on the hearing of the motion allow the applicant to amend the applicant’s statement, whether by specifying different or additional grounds of relief or otherwise, on such terms, if any, as it thinks fit and may allow further affidavits to be used if they deal with new matters arising out of an affidavit of any other party to the application.”*

11. It could be argued that the last clause of GCR O.53, r.6(2), beginning “*and may allow ...*” is wide enough that the court may allow any party in a judicial review application to adduce further affidavits in order to deal with new matters that arise. However, having regard to how GCR O.53, r.6(2) is drafted, and also the position of GCR O.53, r.6(2) within the structure of GCR O.53, r.6 more generally, I conclude that the power to allow further evidence in GCR O.53, r.6(2) is intended to be exercisable in favour of the applicant for judicial review only and is intended to address affidavits filed on behalf of the applicant in reply.

11.1 As to the first point, the last clause of GCR O.53, r.6(2) must be read as a continuation of the text in the first part of the rule, which is explicitly directed at evidence that is relied upon by the applicant for judicial review. Read as a whole, GCR O.53, r.6(2) is directed at applicants.

11.2 As to the second point, GCR O.53, r.6(3) requires the applicant for judicial review to give notice of any intention to amend the applicant’s statement or to rely on further affidavits and is a continuation of the topic in sub-rule (2) addressing the practical consequences of exercising the power in that sub-rule. It is only when one reads on to GCR O.53, r.6(4) that the rule deals with the position of the respondent. Sub-rule (4) requires that the respondent’s evidence be filed as soon as practicable and in any event within 56 days, unless the court otherwise directs.

Thus, the overall structure of GCR O.53, r.6, reinforces the conclusion that sub-rule (2) is intended to concern any additional evidence on which the applicant wishes to rely.

12. GCR O.53, r.6(4) provides that:

*“(4) Any respondent who intends to use an affidavit at the hearing shall file it as soon as practicable and in any event, unless the Court otherwise directs, within 56 days after service upon the respondent of the documents required to be served by paragraph (1).”*

In fixing the 56-day long-stop date, the rule refers back to service of the documents required to be served by GCR O.53, r.6(1). The documents listed in paragraph (1) necessarily do not include any further affidavit evidence filed by the applicant in reply to affidavits of other parties. GCR O.53, r.6(4) is therefore not directed at evidence from the respondent in response to any evidence filed by the applicant in reply.

13. This is readily explicable because in most judicial review proceedings it will be inconsistent with the aim of speedy certainty to permit a round of evidence after any evidence in reply filed by the applicant. To do so would usually add an additional and unnecessary procedural step towards the final hearing of the application, within a process that is intended to be streamlined and to reach a speedy conclusion.

14. In *Soto* and *IBC*, the respondents had not served any evidence in response to the application, as required by GCR O.53, r.6(4). They each sought an extension of the time limit provided in that rule to be able to do so. Neither case was considering a situation where the respondent had filed evidence as required but wished to adduce further evidence to answer points made in the applicant’s evidence in reply. I therefore do not consider them to be of assistance in the different circumstances presented by this case.

15. I therefore reject Mr Buttler’s argument. I consider that my power to make an order regarding the Respondent’s intended additional evidence arises under the inherent jurisdiction of the Court to control its processes, rather than as the result of the operation of GCR O.53, r.6(4).

16. Mr Lowe relies on the requirement in the overriding objective that the Court must deal with cases justly. He argues that to do so, the Court must have before it all relevant material. He says that there have been no breaches by the Respondent of any orders of the Court or of the Rules, so that the only live question before the Court is one of fairness. Mr Lowe contends that the new material is at least arguably relevant to the issues of whether the Respondent made a factual error that vitiates her

decision and whether she would have made the same decision in any event on the basis that the public interest in disclosure would have trumped the Applicant's objections.

17. Mr Lowe says that it is not unfair to the Applicant to allow the additional evidence to be adduced because the Applicant can argue at the final hearing that the evidence is irrelevant, which is its position. He submits that unless the Court is convinced that the evidence cannot conceivably be relevant, then I should allow the Respondent to adduce and rely on it and deal with relevance at the final hearing.
18. Mr Buttler submits that the material in the evidence sought to be adduced and relied on by the Respondent was not before her when she made her decision which is being challenged. He says it is therefore not relevant or admissible, and to allow it in would risk the court being distracted into substituting its own decision on the appeal rather than carrying out the more limited review appropriate on a judicial review application. He also complains that the additional evidence is likely to impact the length of the hearing and risks an adjournment of the hearing if it becomes necessary to deal with all of the issues raised. He does not suggest that there is likely to be any substantive prejudice to the Applicant's ability to deal with the issues raised if I give the Respondent leave to rely on the additional evidence.
19. Mr Buttler's position on relevance appears to me to have considerable merit. I am sceptical that the further evidence sought to be introduced by the Respondent will be relevant to my determination of the issues on the judicial review. However, I cannot say that there are no conceivable circumstances in which some of the additional evidence might be relevant. I cannot determine the relevance question now without, in effect, embarking on a mini-trial, which would be inappropriate, and it would be disproportionate and practically difficult and inefficient to try to blue pencil the evidence to exclude parts that are more obviously irrelevant.
20. In principle, then, I consider that the Respondent should be permitted to adduce the additional evidence that she contends will be relevant to my determination of the issues on the substantive application for a judicial review.

21. As to the impact on the exercise of my discretion of the need for speedy certainty in judicial review claims generally, this particular case is somewhat atypical:
- 21.1 Substantively, it is a challenge to the Respondent's decision on the appeal regarding disclosure of two documents under a FOIA application. There are no wider impacts from this case on good administration or public law decision-making or on third parties, other than as regards whether or not the documents in question should be disclosed.
- 21.2 The case has already been subject to significant delays in its progress, without any fault of the parties.
- 21.3 In my judgment, with appropriate discipline and focus, the parties should be able to deal with the additional evidence and the issues raised within the existing time estimate for the hearing. The hearing date is therefore unlikely to be affected by my decision whether or not to allow the Respondent to rely on the additional evidence.
22. In deciding how to exercise my discretion, I therefore take the chronology into account but its importance is not to be overemphasised.
23. Overall, I consider that justice and fairness requires that the Respondent be permitted to adduce the additional evidence on which she wishes to rely. That is not outweighed by the need for speedy certainty as it should be applied in this case, and there is no evidence of any prejudice to the Applicant if leave is granted.

**Dated 22 May 2025**



**THE HONOURABLE JUSTICE JALIL ASIF KC**  
**JUDGE OF THE GRAND COURT**