

1 IN THE GRAND COURT OF THE CAYMAN ISLANDS

2 CIVIL DIVISION



3 CAUSE NO. G004 OF 2016

4 BETWEEN:

5 (1) THE ROYAL CAYMAN ISLANDS POLICE ASSOCIATION

6 (2) DANE PINNOCK

7 (3) CLAIRE PINNOCK JACKSON

8 (4) TO (11) THE PLAINTIFFS LISTED IN THE SCHEDULE TO THE
9 PETITION OF THE 11TH JANUARY 2016

10 PLAINIFFS

11 AND:

12 (1) THE COMMISSIONER OF THE ROYAL CAYMAN ISLANDS
13 POLICE SERVICE

14 (2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS

15 DEFENDANTS

16 *Appearances:*

17 *Plaintiffs represented by Mr Jeffrey Jupp & Mr Guy Diliway-Parry Attorneys-at-*
18 *Law instructed by Priestleys*

19 *Respondent represented by Ms Reshma Sharm, Deputy Solicitor General & Ms*
20 *Rachael Hoare, Crown Counsel instructed by the Attorney General's Chambers.*

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JUDGMENT

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1. This action was brought as a challenge to the former mandatory retirement age of 55 for non-gazetted police officers and the re-engagement policy utilized by the Commissioner of Police.

2. The First Plaintiff is an Incorporated Association representing police officers who serve with the Royal Cayman Islands Police Service (RCIPS).

3. The Second Plaintiff enlisted in the RCIPS on October 1, 1991 and during his service attained the rank of Inspector. He was required to retire on July 25, 2013. Prior to retirement he was advised that he could be re-engaged but only at the reduced rank of Senior Constable. After retirement, he was re-engaged in the RCIPS in that post.



1 4. The Third Plaintiff enlisted in the RCIPS on January 19, 1987. On April 1,
2 2006 she was promoted to the rank of Detective Sergeant. Prior to
3 mandatory retirement on September 17, 2015, she expressed the desire to
4 remain in the service of the RCIPS at her existing rank but this was refused.
5 She did not wish to be re-engaged in the position of Constable and as such
6 she did not apply for re-engagement.

7
8 5. The 10th Plaintiff enlisted with the RCIPS on a two year fixed term contract
9 on September 5, 2007 at the rank of Senior Constable. His contract was
10 renewed thereafter for further fixed periods of two years on September 18,
11 2009 and September 19, 2011 at the same rank. He attained the age of 55
12 years on January 28, 2011. On September 18, 2014 his contract was
13 renewed for a further period ending January 28, 2016 at the reduced rank
14 of Constable. It was again renewed for one year at the same reduced rank
15 on May 1, 2016.

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17 6. The claims brought by the Fourth and Seventh Plaintiffs were discontinued.

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19 7. The Fifth, Sixth, Eighth, Ninth and Eleventh Plaintiffs are all either officers
20 or former officers of the RCIPS who joined that service before November
21 22, 2010. Each was required to either retire at the age of 55 years or when
22 it was realised by the First Defendant that they were over the age of 55.

23



1 8. Based on their individual circumstances, the Court was asked:

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3 1) To grant a declaration that the Second, Third, Fifth, Sixth and Eighth
4 to Eleventh Plaintiffs' rights under sections 9, 16 and 19 of the Bill of
5 Rights have been interfered with;

6

7 2) To Order that the Second, Third, Fifth, Sixth and Eighth to Eleventh
8 Plaintiffs who have been required to retire at age 55 years in breach
9 of their rights under sections 9, 16 and/or 19 of the Bill of Rights shall
10 be awarded damages against the Respondents for all financial
11 losses arising out of their loss of office which has resulted from this
12 breach of their rights. Such damages to be assessed'

13

14 3) Such other order as the Court thinks fit.



1 9. This trial concerned liability. For the purposes of the trial, it was agreed by
2 both sides, that the evidence of the Second and Third Plaintiffs was
3 representative of all the remaining Plaintiffs.

4
5 10. It must be stated from the outset that a great deal of evidence was adduced
6 in this case on behalf of all parties. This included live testimony. Additionally,
7 very detailed submissions were made by Counsel. All of this material was
8 considered but it was not possible to reproduce all of the material. An
9 attempt has been made to highlight and summarize some of the main
10 matters.

11
12 **The Law**

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14 11. It is relevant to look at the changes to the relevant sections of the Police
15 Law over the years.

16
17 12. Sections 19 and 20 of the Police Law (2006 Revision) provided that:

18 *"19. Notwithstanding this Part, the Commissioner may enlist such non-gazetted officers from outside the Islands upon such contractual terms as may to him appear expedient.*



1 20. (1) *Non-gazetted officers who have attained the age of fifty-five*
2 *years, shall be retired without prejudice to their being accepted for such*
3 *further period or periods of service as may be fixed by contract.*

4
5 (2) *A non-gazetted officer who has served for twenty-one years may*
6 *retire on pension without prejudice to his being accepted for further*
7 *period or periods of service as may be fixed by contract.*

8
9 (3) *The Commissioner may call upon any officer who has attained*
10 *the age of fifty to retire.”*

11
12 13. Sections 20 and 21 of the Police Law, 2010 as reproduced in the Police
13 Law (2014 Revision) provided:

14 “20. *Notwithstanding the provisions of this Part, the Commissioner may*
15 *enlist such police officers from outside the Islands upon such contractual*
16 *terms as may to him appear necessary.*

17



1 21. (1) A police officer who has attained the age of sixty years, shall be
2 retired without prejudice and may, in special circumstances and for such
3 temporary periods, be accepted for such service as may be fixed by
4 contract.

5
6 (2) A police officer who has served for thirty years in the Service may
7 retire without prejudice and may, in special circumstances and for such
8 periods, be accepted for such service as may be fixed by contract.

9
10 (4) The Commissioner may

- 11 a. in the public interest
12 b. on medical grounds; or
13 c. to improve the efficiency of the organisation

14 Call upon any police officer ... to retire on pension.

15
16 (7) The provisions of this section shall not apply to a police officer
17 appointed prior to the date of commencement of this Law but, on and
18 after that date, the provisions of Section 20 of the Police Law (2006
19 Revision) shall continue to apply to him as if this Section had not come
20 into force.”

21
22 14. November 22, 2010 was the “Effective Date” that the new provisions
23 referred to in section 21(7) above, came into force.



1 15. Thereafter, Section 8 of the Public Service Management (Amendment) Law
2 2016 provided:

3

4 *"8. The Police Law (2014 Revision) is amended in s.21 as follows:*

5

6 a. *by repealing subsection (1) and substituting the following sub*
7 *section –*

8

9 *"(1) A police officer who has attained the age of sixty-five*
10 *years, shall be retired without prejudice and may, in special*
11 *circumstances and for such temporary periods, be accepted*
12 *for such service as may be fixed by contract; however, a*
13 *police officer of the rank of Inspector or below who has*
14 *attained the age of sixty years, shall be retired without*
15 *prejudice unless the officer successfully completes a fitness*
16 *and medical test immediately prior to attaining that age.";* and



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(b) *by repealing sub section (7) and substituting the following sub section –*

“(7) The provisions of this section shall not apply to a police officer appointed prior to the date of commencement of this Law, unless the police officer elects to have those provisions apply; and if the police officer does not so elect, on and after that date, the provisions of s.20 of the Police Law (2006 Revision) shall continue to apply to that police officer as if this section had not come into force.”

The foregoing is referred to as *‘the 2016 Amendment’*.

16. It was the Plaintiffs’ case:

(1) That the forced retirement of police officers when they reach the age of 55 was an unjustified breach of section 9 of the Bill of Rights.



1 (2) That the difference in treatment between Royal Cayman Islands
2 Police Association (“RCIPA”) officers who were required to retire at
3 the age of 55 and those required to retire at the age of 60 is
4 discriminatory on the grounds of age and an unjustified breach of
5 section 16 of the Bill of Rights when read with section 9.

6
7 (3) That the difference in treatment between Caymanian officers
8 required to retire at age 55 or serve at a reduced rank, and officers
9 recruited from the United Kingdom who were permitted to serve
10 beyond that age at their existing rank was related to national origins
11 and is a further unjustified breach of section 16 of the Bill of Rights
12 when read with section 9.

13
14 (4) That the forced retirement of officers who were aged 55, in
15 circumstances where their younger and/or non-Caymanian
16 colleagues did not have to retire until the age of 60 was unlawful
17 and/or irrational and/or disproportionate contrary to section 19 of the
18 Bill of Rights.



1 **The Bill of Rights**

2

3 17. The following sections of the Bill of Rights, Freedoms and Responsibilities
4 ('The Bill of Rights') formed the foundation of the Plaintiffs' claim.

5

6 Section 9 of the Bill of Rights *provides:*

7

8 “(1) Government shall respect every person’s private and family life, his
9 or her home and his or her correspondence.

10

11 (3) *Nothing in any law or done under its authority shall be held to*
12 *contravene this section to the extent that it is reasonably justifiable in a*
13 *democratic society –*

14

15 1. *In the interests of defence, public safety, public order, public*
16 *morality, public health, town and country planning, or the*
17 *development or utilisation of any other property in such a*
18 *manner as to promote the public benefit;*

19

20 2. *For the purpose of protecting the rights and freedoms of other*
21 *persons;”*

22

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1 18. Section 16 of the Bill of Rights provides:

2

3 *“(1) Subject to subsections (3), (4), (5) and (6), government shall not*
4 *treat any person in a discriminatory manner in respect of the rights under*
5 *this part of the Constitution.*

6

7 *(2) In this section, “discriminatory” means affording different and*
8 *unjustifiable treatment to different persons on any ground such as sex,*
9 *race, colour, language, religion, political or other opinion, national or*
10 *social origin, association with a national minority, age, mental or physical*
11 *disability, property, birth or other status.*

12

13 *(3) No law or decision of any public official shall contravene this section*
14 *if it has an objective and reasonable justification and is reasonably*
15 *proportionate to its aim in the interests of defence, public safety, public*
16 *order, public morality or public health.*

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(4) Subsection (1) shall not apply to any law so far as that law makes provision –

(d) whereby persons of any such description of grounds as is mentioned in subsection (2) may be subjected to any disability or restriction or may be accorded any privilege or advantage which, having regard to its nature and to special circumstances pertaining to those persons or to persons of any other such description, is objectively and reasonably justifiable in a democratic society and there is a reasonable proportionality between the means employed and the purpose sought to be realised.”

19. Section 19 of the Bill of Rights provides as follows:

“(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair. ”



1 **The Evidence for the Plaintiffs**

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3 20. Evidence was adduced on behalf of the Plaintiffs concerning the
4 requirements for non-gazetted officers to retire at age 55. Additionally, there
5 was testimony about the practice of the RCIPS requiring that those who
6 apply for re-engagement, if reengaged, to do so at the rank of Constable.

7

8 21. Mr. Rudolph Gordon testified on behalf of the First Plaintiff. He stated that
9 he had enlisted in the police force on August 21, 1989 and during his tenure
10 rose from the position of Constable to Detective Inspector. In August 2010
11 he was transferred to the George Town Police Station as a Critical Incident
12 Manager. In March 2010 he was elected as Chairman of the Joint Branch
13 Board and thereby was President of the First Plaintiff. He testified that he
14 had first-hand experience and had dealt with and observed officers of all
15 ranks for quite some time. As Chairman of the First Plaintiff he had also
16 observed and dealt with personal and professional issues experienced by
17 officers including those who had experienced “forced” early retirement.



1 22. He stated that his association first became aware that officers were being
2 treated differently under the Police Law in 2013. At that time members
3 approached with complaints that they were being forced to retire or would
4 soon be required to do so. Yet, to their knowledge the mandatory retirement
5 age of 55 would not apply to those recruited after 2010. His association
6 contacted the Honourable Premier and the Honourable Attorney General
7 and subsequently a meeting was held with these persons and the issue was
8 discussed.

9
10 23. It was his claim that both acknowledged that the law at the time was
11 discriminatory. He also claimed that his association was given a
12 commitment that the law would be changed. Both of these claims were
13 denied by the Honourable Attorney General.

14
15 24. Mr. Gordon stated that the work of a police officer can be difficult and
16 dangerous. This led to the development of close relationships of mutual
17 dependence and support between officers. Further, receiving a promotion
18 was a significant event in an officer's career because in addition to financial
19 gain there was a major boost in self-confidence and self-worth.
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1 25. He referred to the informal re-engagement policy whereby retired officers
2 were rehired as constables, which was another source of complaint. It was
3 very difficult for officers to adjust to being re-engaged at the lowest rank. He
4 testified that he would feel personally degraded to return to work as a
5 Constable having attained the position of an Inspector.

6

7 26. Mr. Gordon having testified about the change in relationships with
8 colleagues for officers after retirement, conceded that this was not unique
9 to the police force and that relationships could be maintained.

10

11 27. The Plaintiffs' claim concerning discrimination on the basis of nationality
12 rested on the agreed evidence that there were five British officers over the
13 age of 55 who were serving in higher positions than the post of constable.
14 This will be considered later.

15

16 28. The Second Plaintiff gave evidence about how important his career as a
17 police officer had been to him. He stated how much he enjoyed the job, his
18 rapport with his colleagues and his relationship with members of the public
19 that he served. He stated that he rarely took sick days or annual leave and
20 frequently worked overtime.

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1 29. It was his evidence that five days before his 55th birthday, while serving as
2 an Inspector, he was advised by Human Resources that he was close to
3 the mandatory retirement age and that in order to continue working he
4 would have to sign a contract to re-enlist as a Constable. He expressed his
5 view that the law did not give the Commissioner of Police the right to reduce
6 his rank or salary. He stated that subsequently, he informed the
7 Commissioner of Police about his concerns. However, the Commissioner
8 of Police confirmed the position as stated by Human Resources. He
9 eventually signed a contract to re-enlist as a Senior Police Constable. This
10 occurred over a month after his 55th birthday and he continued working as
11 an Inspector up to July 25, 2013.

12
13 30. He testified that he experienced a reduction in salary and he no longer
14 received pension benefits as a part of his salary package. Apart from the
15 financial loss, he stated that he was embarrassed to be serving at a lower
16 rank. He stated that he felt disadvantaged because there were British police
17 officers on contracts who were allowed to keep their rank and salary despite
18 being over the age of 55.



1 31. He stated that it was difficult for him to make any further career progression
2 either laterally or to a higher rank. He expressed feelings of humiliation and
3 dejection because to his former colleagues, it appeared as though he had
4 been given a demotion.

5
6 32. During cross-examination the Second Plaintiff admitted that when he joined
7 the force he was aware that he would have to retire at the age of 55 years.
8 He stated that he took that into account when he was making plans.

9
10 33. He stated that he spent 24 years in the police force before retiring and six
11 of those years was as an Inspector. He indicated that he initially felt
12 embarrassed to return to work as a Constable having previously attained
13 the post of Inspector. He stated that his colleagues treated him differently
14 but not disrespectfully and that he was able to continue to work with them.
15 It took him a while to become accustomed to his changed circumstances
but he stated that he focused on the job and continued to serve the public.
Many of his colleagues told him that they would never have been able to do
what he did, by returning to work at a lower rank and for a lower salary.



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20 34. He conceded that having retired, he has started to receive his pension. This
21 is in addition to his current salary. He also testified that he believed that he
22 was doing a valuable job as a Constable. He however believed that he
23 could contribute more as an Inspector.

1 35. He testified that he was not aware of any Caymanian Inspectors who had
2 returned to the police force in that post after retirement. He was of the view
3 that had he been British he would have been offered a contract as an
4 Inspector after retirement.

5

6 36. It was the evidence of the Third Plaintiff that she joined the police force on
7 January 19, 1987 as a Constable. After five years she was transferred to
8 the Commercial Crime Branch which is now called the Financial Crime Unit.
9 She was eventually promoted to the rank of Detective Sergeant and she
10 remained with this unit for 23 years. Her responsibilities included the
11 investigation of complex fraud and financial investigation matters and her
12 duties included the supervision and training of other officers.

13

14 37. She stated that in February 2015, being aware that her mandatory
15 retirement age was approaching, she approached the Human Resources
16 Department and informed them that she did not wish to retire. In May 2015
17 she received a letter from that Department which set out the conditions for
18 her to re-enlist. She then wrote to the Commissioner of Police and stated
19 that given her level of experience she was not prepared to re-enlist as a
Constable but that she would be prepared to do so as a Sergeant.



1 38. She stated that she had been a Sergeant for nine years and that she was
2 the senior and most experienced Fraud Investigator in the Department. She
3 felt that it was both unreasonable and impracticable for her to return to the
4 force after retirement, as a Constable. She would be facing a reduction both
5 in rank and in income.

6

7 39. She indicated that she was advised that if re-engaged there was no
8 guarantee that she would remain at the Financial Crimes Unit because she
9 could be placed anywhere. On July 14, 2015, she received a letter denying
10 her request to re-enlist as a Sergeant. She retired with effect from
11 September 17, 2015 when she attained the age of 55 years.

12

13 40. She stated how important her job had been to her both on a professional
14 and a personal level; and the loss she suffered in those areas because of
15 her retirement. She stated that the RCIPS was a close-knit and supportive
16 community. She also stated that while she has maintained contact with
17 colleagues, she noted that this had decreased because persons were busy.
18 She stated that she had lost group support and that she found it hard to
19 form new relationships.



1 41. She also stated that she no longer had the daily contact that she had had
2 with the public as a police officer. She stated that she lost income and
3 pension benefits and had to compete with younger persons in the private
4 sector for jobs. She considered it unfair that officers who were engaged after
5 her had the option to retire at age 60.

6
7 42. During her evidence, the Third Plaintiff made reference to memos from
8 Detective Chief Inspector Raymond Christian dated 05 June 2015 and 12
9 June 2015 respectively. Both were directed to Commissioner David Baines
10 and submitted through Detective Superintendent Stephen Ratcliffe.

11
12 43. In the first, Detective Chief Inspector Raymond Christian, her line manager,
13 solidly supported her application to remain on the force in her current
14 position. In the second memo, he withdrew his support, stating that she
15 lacked the requisite enthusiasm and interest.

16



1 44. The Third Plaintiff commented on the manuscript note at the bottom of the
2 first memo which was apparently written and signed by Detective
3 Superintendent Stephen Ratcliffe, who was in charge of her department.
4 That hand written note, referred to her and another officer and indicated that
5 if she were not due for retirement, it would be his wish to have both moved
6 to another section and to develop other officers under his command. It
7 stated that the Third Plaintiff did not have a motivation to stay in the
8 Financial Crimes Unit and that he did not wish to retain her in the unit.

9
10 45. The Third Plaintiff stated that she could give no explanation for the positions
11 taken by either officer. She stated that she had Performance Development
12 Reviews which ran contrary to the low opinion of her which was expressed
13 in these memos. She disagreed with the view expressed that the outcome
14 of her application was due to poor performance by her as an officer.

15
16 46. During cross-examination the Third Plaintiff was referred to her letter of
17 application to be reinstated at her then position. She mentioned therein that
18 a retired Constable had been reinstated at the position of Sergeant. She
19 conceded that this officer was Sergeant Davis Scott. She commented that
20 she was unaware of the circumstances that allowed for this reinstatement
21 at a higher position than Constable.

22



1 47. During cross-examination, she conceded that she had been aware that by
2 law, she was required to retire at age 55 and she had made plans for that
3 day. She admitted that her relationship with other police officers did not end
4 because she left the workplace, but they saw each other less frequently.
5 She conceded that this was not peculiar to retirement from police
6 employment. She acknowledged that she had stated plainly in her
7 correspondence that she would not apply to be reengaged as a Constable.
8 She also conceded that no offer of employment was made to her in that
9 capacity.

10

11 48. The Third Plaintiff believed that there was some personal animus towards
12 her which was behind the comments made about her performance.

13



1 **Evidence for the Defence**

2

3 49. John Kim Evans Jr. testified that he served as a police officer with the
4 RCIPS from 11th August 1986 until 31st December 2009, attaining the rank
5 of Detective Inspector. He also served as President of the First Plaintiff from
6 2006 until he left the service.

7

8 50. It was his evidence that in or about 2006/2007 he heard that the Police Law
9 was going to be repealed and replaced. He sought information about the
10 proposed changes in order to disseminate same to the First Plaintiff's
11 membership; and seek input about their concerns. He stated that he did
12 pass on representations made and suggestions for change to the relevant
13 committee.

14

15 51. According to the law at the time, gazetted officers served at the pleasure of
16 the Governor and in practice, were expected to continue to serve until they
17 attained the age of 55 years. Gazetted officers did not have the option to
18 retire after a certain number of years' service as did non-Gazetted officers.



1 52. Mr Evans stated that due to the demanding nature of the job, it was the
2 culture of members of the police force to “count down” to the time when they
3 would become eligible to retire on pension. This would allow them to leave
4 the police force in good standing and continue on to new opportunities. He
5 further stated that Gazetted officers desired the opportunity to retire after a
6 number of years’ service; namely 30 years. He gave evidence that on 21st
7 February 2008 he wrote directly to the Honourable Attorney General
8 passing on these representations and requesting that a provision to this
9 effect be inserted into the new law. During his testimony, Mr. Evans
10 examined drafts of proposals that were considered for legislative
11 adjustment. He stated that he ceased to be involved with the association
12 after he left the police force at the end of 2009.

13
14 53. Mr Evans stated that he received no representations that non-gazetted
15 officers were dissatisfied with their own retirement arrangements or that
16 they wanted their retirement age to be increased.

17



1 54. It was his evidence that the non-gazetted officers already in the police
2 service wanted to ensure that their ability to retire with immediate access to
3 a pension after 21 years' service or at the age of 55 years was preserved
4 notwithstanding any changes to the Police Law that might be made. He
5 stated that he recommended that the retirement arrangements for non-
6 gazetted officers be retained. He also stated however, that after he left the
7 police force he had no input in the changes to the Police Law.

8
9 55. The Honourable Attorney General Mr. Samuel Bulgin, QC also gave
10 evidence in this matter.

11
12 56. He confirmed the meeting that took place on October 2, 2013 as indicated
13 by Mr. Rudolph Gordon. He stated that it had been scheduled at the request
14 of the First Plaintiff to discuss matters relating to police welfare. This
15 included the retirement of officers who were hired prior to the
16 commencement of the Police Law, 2010.

17
18 57. The Honourable Attorney General denied that either he or the Honourable
19 Premier stated that the current law was discriminatory. It his evidence that
20 the Honourable Premier indicated that they would look into several issues
21 raised by the First Plaintiff. He indicated that in his view section 21 (7) of the
22 Police Law, 2010 was not discriminatory.

23



1 58. He went on to state that the issue of the bifurcated retirement age for police
2 officers was addressed in 2016 as part of a general review of the retirement
3 age for all public servants.
4

5 59. During his testimony, the Honourable Attorney General examined
6 correspondence and draft Bills concerning the amendment of the Police
7 Law (2006 Revision). It was established that there had been consideration
8 of the law removing any distinction between gazetted and non-gazetted
9 officers. At some point, the retirement age was moved from 55 years to 60
10 and the period of employment after which retirement could be taken was
11 adjusted from 21 years to 30 years.
12

13 60. He explained that the government engaged with the Royal Cayman Islands
14 Police Service throughout the process and that the Commissioner of Police
15 had appointed a point person for this process. This was Deputy
16 Commissioner Ennis.
17

18 61. He was also taken through his comments on the Police Bill, 2010 which
19 were recorded in the Official Hansard Report dated Friday, 10 September
20 2010.
21



1 62. He was referred to his comments that under the existing law, persons
2 classified as being of non-gazetted rank were allowed to retire after serving
3 21 years. Those who did not choose to do so retired at age 55. He explained
4 that the relevant clause concerning retirement preserved the position as it
5 related to existing officers.

6

7 It is quoted:

8

9 *“What this has done is to preserve the position as it relates to existing*
10 *officers. In other words, those officers who are currently in the Force and*
11 *who still want to retire after having put in 21 years will still be allowed to*
12 *do so. But once this law is in place, officers joining the Force thereafter*
13 *will be required to serve 30 years before they can retire on pension. Or,*
14 *of course, you have the option of going to age 60.”*

15



1 63. During re-examination it was his testimony that he was speaking to the Bill
2 as it was then drafted. He stated that after the 2010 law came into effect, if
3 officers had remained in the force they could retire after 21 years. If they
4 had joined after the law came into force they would either retire after 30
5 years of service or at age 60.

6
7 64. He testified that his comments were based on the content of the Police Bill,
8 2010.

9
10 65. The Honourable Attorney General was referred to correspondence between
11 members of the RCIPS in September 2012. The correspondence indicated
12 an understanding that under the new law, officers who had been hired prior
13 to its enactment could choose to retire between ages 55 or 60 if retirement
14 at 21 years of service was not an option. Despite the content of the
15 correspondence he stated firmly that he had not been consulted in relation
16 to this communication and further; that that had not been what the law
17 stated. He testified that he had given no advice that this was the meaning
18 of the law.

19



1 66. Mr. Bulgin, QC was referred to a Cabinet Paper which sought the approval
2 of Cabinet to draft amendments to the 2010 law. This would allow police
3 officers hired before the 2010 law came into force to have the choice to opt
4 into retirement at age 60.

5
6 67. It referred to the differing retirement ages of officers hired prior to the
7 enactment of the law and after. It was discussed therein that while officers
8 hired under the old law retired at age 55, received a pension, if rehired as
9 Constables, they could no longer make pension contributions, putting them
10 at a disadvantage. It was a discussion point that the exclusion of retirement
11 coverage for officers hired prior to the Police Law, 2010 as discriminatory.
12 The Cabinet Paper contained a recommendation requesting that Cabinet
13 advise His Excellency the Governor to approve the amendment to the
14 Police Law, 2010 to remove the discriminatory provision.

15



1 68. The Honourable Attorney General testified that he did not recall seeing this
2 paper at the time and he pointed out that if his Department had been
3 requested to provide input, the advice would have been quoted therein. He
4 testified that it was after this that he and the Honourable Premier attended
5 a meeting with representatives of the First Plaintiff. During re-examination
6 he pointed out that the Cabinet paper presented to him for viewing did not
7 contain the signature of the Honourable Minister and it did not have any
8 reference number. He testified that all such papers contained the date and
9 the reference number.

10
11 69. The former Commissioner of Police of the RCIPS, David Baines, gave
12 evidence in this matter. He served in that capacity from June 1, 2009 until
13 May 31, 2016. He confirmed that in his role as Commissioner he had
14 general responsibility for the recruitment and re-hiring of officers and
15 specific responsibility for the retirement and re-engagement decisions
16 which were the subjects of this suit.

17



1 70. It was his evidence that the old Police Law in the Cayman Islands was a
2 legacy of colonial policing practice. Under the Police Law (2006 Revision),
3 the retirement arrangements for police officers depended on their rank.
4 Non-gazetted officers could retire on pension after 21 years of service and
5 if they did not they were required to retire at age 55. Gazetted officers
6 served at the pleasure of the Governor and were expected to continue to
7 serve until at least 55 years of age.

8
9 71. When the law was modernized in 2010 the distinction between gazetted and
10 non-gazetted officers was abandoned. The Commissioner stated that it had
11 been proposed that the retirement age be standardized and aligned with
12 other parts of the civil service so that all officers would be required to retire
13 at age 60 or at their option after 30 years' service, irrespective of rank. He
14 stated that he fully supported this proposed change. He stated that he was
15 aware that the First Plaintiff had made representations for officers to be able
to retain their ability to retire after 21 years' service or at age 55 for non-
gazetted officers.



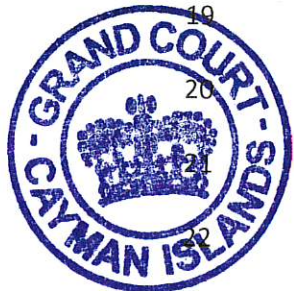
19 72. According to Commissioner Baines, pursuant to section 21 (7) of the Police
20 Law (2014 Revision) and section 20 (1) of the Police Law (2006 Revision)
21 non-gazetted officers appointed before the effective date of 22nd November
22 2010 were required to retire at age 55. An officer could express an interest
23 in being accepted for a further fixed term period of service beyond that age.

1 73. According to the Commissioner he was conscious that more recent recruits
2 were entitled to continue to work until age 60 and he sought to
3 accommodate requests for re-engagement where possible subject to the
4 consideration of the following factors:

- 5
- 6 “a. Full evaluation of past performance;
- 7 a. Support from line managers;
- 8 b. A report from the Professional Standards Unit setting out any past
9 or pending disciplinary proceedings against the officer;
- 10 c. A medical evaluation; and
- 11 d. RCIPS’ organisational needs and budget.”
- 12

13 74. He went on to explain that officers accepted for re-engagement beyond
14 retirement age were expected to return at the rank of Constable or below.
15 He stated that the administrative practice of requiring retired officers to
16 return at this rank predated his tenure with the RCIPS but served the
17 important purposes of:

- 18
- 19 “a. Facilitating the career development and upward mobility of more
20 junior officers;
- 21 a. Efficient planning of the departure and promotion of staff; and
- 22 b. In some cases, avoiding potentially humiliating disputes about the
23 officer’s ability to continue in their current position and at their
24 current rank.”



1 75. He stated that the first two objectives were particularly important because
2 they created incentives for promising junior officers to remain in the service.
3 This was particularly important because the police force struggles to retain
4 quality staff.

5
6 76. He stated in his evidence that in recognition of the fact that the reduction in
7 rank for officers who were re-engaged involved a reduction in their original
8 salary grade, he tried to ameliorate any resulting disadvantage by
9 remunerating officers at a point on the lower pay scale which was close to
10 their previous salary. In doing this he also sought a balance with the
11 austerity measures introduced by the Portfolio of the Civil Service in 2012.
12 Those measures required that re-engaged civil servants were to be paid at
13 point 1 of the relevant salary scale. He sought this balance notwithstanding
14 the fact that almost all re-engaged officers received a pension in respect of
15 their prior service in addition to their new monthly salary.

16
17 77. The Commissioner commented on the position of the Third Plaintiff who had
18 applied to be re-engaged after retirement at her then rank and salary of
Sergeant. He stated that her line manager initially supported her application
but then subsequently withdrew his support. As shown by documentation,
this withdrawal came after a more senior supervising officer had registered
his disagreement that she should be re-engaged pursuant to her request.



1 78. The Commissioner stated that due to this feedback he formed the view that
2 the criteria for re-employment had not been met and he had declined to offer
3 re-employment to her in her current post.

4
5 79. During cross-examination he testified that he relied on the feedback from
6 her supervisors. He stated that he would not have seen her medicals or her
7 Performance Development Reviews.

8
9 80. The Commissioner gave evidence that "special" contracts were offered to
10 officers enlisted from outside the Cayman Islands where no suitably
11 qualified local candidates were available to fill a specific vacancy. He stated
12 that the vacancy was broadly advertised overseas after internal applications
13 were invited and processed and no suitable candidate found. He stated that
14 such contracts were for short fixed periods of time, of typically 2 to 4 years.

15
16 81. He stated that the expiration of special contracts provided opportunity to
17 assess whether there was justification for the renewal of the contract
18 including whether any local officer had developed the requisite skills and
19 training to take over the role.



1 82. He commented that frequently when more senior or specialist roles were
2 advertised externally, such as for financial investigators, firearms officers
3 and intelligence officers, the successful applicant is usually appointed from
4 the United Kingdom. He stated that this was because as a British overseas
5 territory, the Cayman Islands followed a predominantly United Kingdom
6 system of policing which was based on the English common law. UK
7 applicants often have the opportunity to receive relevant training and as
8 such they obtain the required qualifications which were relevant to the post.

9
10 83. The Commissioner addressed the allegation that there was discrimination
11 based on nationality. Specifically, that officers recruited to the police force
12 from the United Kingdom in non-gazetted roles before November 2010 were
13 treated more favourably in that they were not required to retire at age 55 or
14 if they were, they were re-engaged without loss of rank.

15



1 84. In his first witness statement, the Commissioner stated that he was aware
2 of four officers from the United Kingdom who were hired before November
3 22, 2010 in non-gazetted roles and who remained in service at Inspector
4 rank beyond their 55th birthday. He stated that all of these officers were
5 employed on special contracts. He identified each of the four persons and
6 made reference to their extensive qualifications and training. He went on to
7 summarize that each officer remained in service at Inspector rank beyond
8 his 55th birthday because of his skill sets and experience which directly
9 qualified him for the position he was performing and it was not simply
10 because he had been recruited from the United Kingdom.

11

12 85. Officer Sean Bryan joined the force as a Detective Constable. The
13 Commissioner stated that he may have been a Sergeant in the Metropolitan
14 Police in the United Kingdom. He was subsequently promoted locally to the
15 post of Sergeant and Inspector having passed the local exams.

16

17 86. The Commissioner was also asked about the other British officers that he
18 had originally identified in his witness statement.

19



1 87. He stated that in September 2009, the RCIPS had been seeking to
2 professionalise its training offerings. Mr. Peter McLoughlin was a recently
3 retired Detective Inspector from the United Kingdom who had trained police
4 forces in the United Kingdom. He had extensive training and experience in
5 the areas of taped interviews, witness and suspect interviews and the
6 management of exhibits. He also had capability in the reviewing of cold
7 cases. He was identified as the best candidate to strategically address skill
8 gaps which had been identified in the force. The best qualified local
9 candidate was a Sergeant who had neither passed the Inspector's exam
10 nor been accredited.

11

12 88. Mr. McLoughlin turned 55 during his third fixed term contract and he was
13 advised of the need to retire for pension purposes but the duration of his
14 current contract was honoured. This contract was subsequently renewed.

15

16 89. Mr. Richard Oliver and Mr. Dennis Walkington had been brought to the
17 Cayman Islands as consultants to a spin-off operation from Operation
18 Tempura. Their work involved investigating allegations of corruption within
19 the RCIPS. After 2 years they were retained as Inspectors in the newly
formed Police Anti-Corruption Unit due to their unique knowledge of the
allegations and their experience.

20

21



1 90. The Commissioner's attention was also drawn to correspondence in
2 February 2014 about another British officer, Inspector Ian Brellisford who
3 had reached the mandatory retirement age of 55.
4

5 91. He identified hand written notes made by himself referring to the force's two-
6 tier recruitment process including short-term contracts which had the age
7 limit of 60 years. Further, the note stated that in several instances
8 specialists were retained on one-year contracts past the 60 year retirement
9 age.
10

11 92. There was a conclusion that he was content to extend the contract of
12 Inspector Ian Brellisford beyond his 55 years on a short-term contract.
13

14 93. The contract and the Performance Development Review (PDR) was also
15 attached. The PDR was particularly good, making reference to the officer's
16 specialist training and abilities in the area of the USG/K9 command and as
17 Chief Firearms Instructor.
18

19 94. The Commissioner explained that his recommendation for this officer was
not because he was British but the holder of the position of Chief Firearms
Instructor traditionally held the rank of Inspector.



1 95. In his second witness statement, on the issue of nationality, the
2 Commissioner made reference to a fifth officer who was Caymanian. This
3 was Police Sergeant Davis Scott and he had been employed as a Police
4 Constable, that is, in a non-gazetted rank, prior to the 2010 law coming into
5 force.

6

7 96. It was not disputed that Officer Scott joined the police force from the time
8 he was age 17 and served as a Police Constable for over 35 years.
9 According to the Commissioner, he developed a unique knowledge of the
10 eastern districts of the Cayman Islands where *“he held public support and*
11 *trust and was highly regarded by public and the criminal community alike.”*
12 He earned several accolades.

13



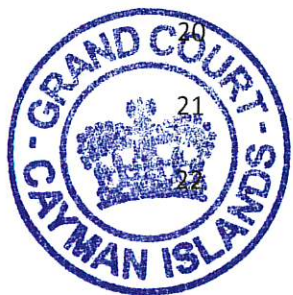
1 97. Police Constable Scott retired on March 9, 2013 as the then longest-serving
2 member of the force. Following his retirement, Commissioner Baines
3 recognized the need for someone of his capability to “head a small,
4 proactive team to be based in the East End to address the emerging
5 criminality in the area.” Officer Scott was considered the ideal person for
6 this post. According to the Commissioner, he offered him the position with
7 the incentive of his being made Sergeant. This was accepted and he was
8 reappointed as a Sergeant to serve between May 1, 2014 and April 30,
9 2016.

10

11 98. It was conceded that Officer Scott was not yet 55 when he was offered the
12 first new contract. However he was put forward as an example to establish
13 that not only British officers received favourable contracts. Further, that the
14 opportunity to be engaged above the rank of Constable existed for suitably
15 qualified Caymanians. Officer Scott’s contract as a Sergeant was
16 subsequently renewed past the age of 55 years.

17

18 99. The Commissioner described Officer Scott as being in a unique position.
19 He further stated that circumstances had not allowed him to make the same
exceptions for every officer as he had done with Scott. To do so in his view
would have negated the directives of the Deputy Governor.



1 100. The Commissioner was asked to explain the difference in treatment of the
2 Second Plaintiff as opposed to Officer Sean Bryan. The Commissioner
3 accepted that the latter had been allowed to remain in the police force in the
4 post of Inspector whereas the Second Plaintiff had not been. He testified
5 that there was no direct comparison between the two men. He stated that
6 the Second Plaintiff had been on a local contract with required retirement at
7 age 55. Officer Bryan had been recruited on a short term contract and
8 thereafter he received another short term contract.

9

10 101. During cross-examination, the Commissioner confirmed that after the 2010
11 law came into force there was some confusion. There were persons in the
12 force who believed that they now had a choice between retiring at age 55
13 and retiring at age 60. This was not the case. Additionally, problems arose
14 with pension benefits in the civil service. The Portfolio of Internal/External
15 affairs realized that they were paying pensions to serving officers who were
16 over 55 years of age. This then stopped. A policy was introduced whereby
17 persons who were receiving pensions but were still employed to the civil
18 service had to revert to point 1 on the salary scale. He went on to state that
19 this was not the position for persons who were on special contracts.



1 102. The Commissioner further testified that any officer on a short term contract,
2 not just British officers, did not have to retire at age 55. He stated that the
3 primary legislation gave him the discretion to appoint officers on contract
4 but did not stipulate the terms.

5
6 103. The Commissioner commented that there was a great deal of unrest about
7 the two-tier retirement plans for police officers and the resulting position
8 concerning pensions and that there was growing pressure for change.

9 104. He agreed that it was an indignity for a Sergeant or an Inspector to return
10 to work in the position of a Constable.

11

12 **Submissions on behalf of the Plaintiffs**

13

14 105. The Court was called upon by the Plaintiffs to consider three issues:

- 15 "a. Is s.9(1) engaged, i.e. is the Plaintiffs' claim within its 'ambit'?
- 16 a. Have the Plaintiffs' rights under s. 9(1) been interfered with?
- 17 b. Is any interference with the Plaintiffs' rights under section 9
- 18 justified?"

19



20

21

1 106. It was submitted that the “forced” retirement of the Second and Third
2 Plaintiffs had an effect on their personal lives due to the small and close-
3 knit community which comprises the RCIPS. The Second Plaintiff described
4 feelings of humiliation and embarrassment due to his demotion and the
5 Third Plaintiff complained that forced retirement had been degrading on her
6 personal relationships and somewhat like a bereavement.

7
8 107. Both claimed that they suffered significantly financially due to either the
9 reduction in salary (Second Plaintiff) or the loss of salary (Third Plaintiff).

10
11 108. It was submitted that forced retirements had a particular impact on police
12 officers because their relationships often involved intense and stressful
13 experiences which were shared over the years. Forced retirements
14 interfered with their close personal relationships.

15
16 109. Additionally the reduction in rank which was imposed by the re-engagement
17 policy carried a stigma and a significant degree of embarrassment and
18 humiliation.



1 110. It was submitted that section 9 of the Bill of Rights codified article 8 of the
2 European Convention on Human Rights (ECHR). This states:

3

4 *“Art. 8 – Right to respect for private and family life.*

5

6 (1) *Everyone has the right to respect for his private and family*
7 *life, his home and his correspondence.*

8

9 (2) *There shall be no interference by a public authority with*
10 *the exercise of this right except such as is in accordance*
11 *with the law and is necessary in a democratic society in*
12 *the interests of national security, public safety or the*
13 *economic well-being of the country, for the prevention of*
14 *disorder or crime, for the protection of health or morals,*
15 *or for the protection of the rights and freedoms of others.”*

16

17

18

19

20

21

22

23



1 111. Reference was made to principles enunciated in several cases emanating
2 from that background. The following quotation was taken from **C v Belgium**
3 **(2001) 32 E.H.R.R. 2** which stated that private life “encompasses the right
4 for an individual to form and develop relationships with other human beings,
5 including relationships of a professional or business nature”. Additionally it
6 was stated in **Pretty v the United Kingdom (2002) 35 E.H.R.R. 1** that
7 Article 8 also “*protects a right to personal development, and the right to*
8 *establish and develop relationships with other human beings and the*
9 *outside world*”.

10
11 112. Citing **Niemietz v Germany (1993) 16 E.H.R.R. 97** Counsel also submitted
12 that it is in the course of their working lives that the majority of people have
13 a significant opportunity to develop relationships with the outside world.
14 Reference was also made to the English Court of Appeal case of **Turner v**
15 **East Midlands Trains [2013] ICR 525**. With reference to the claimant’s
16 dismissal the following was stated “*the damage wrought by the dismissal*
17 *on the social relationships which she had developed with work colleagues*”
18 could in an appropriate case engage Article 8.

19
20 113. Counsel submitted that the concept of private life also extended to aspects
21 of a person’s personal identity, i.e. those personal characteristics that they
22 cannot change. It was argued that a person’s age is an inherent part of their
23 identity just like a person’s sex, race, religion or sexuality.



1 114. Counsel concluded that the effect that dismissal from the service had on the
2 personal lives of the Plaintiffs, brought their claims within the ambit of
3 section 9 of the Bill of Rights. Counsel then proceeded to argue that those
4 rights had been interfered with.

5

6 115. It was submitted that the age of the Plaintiffs was a part of their identity that
7 they could not change and it was the sole reason that they were dismissed.
8 Contemplating the defence that retirement at the age of 60 had the same
9 consequences as retirement of the age of 55 Counsel for the Plaintiffs
10 argued that this may be correct but it did not mean that an individual's rights
11 under sections 9 had not been interfered with. The justification for this
12 interference was what was deemed relevant.

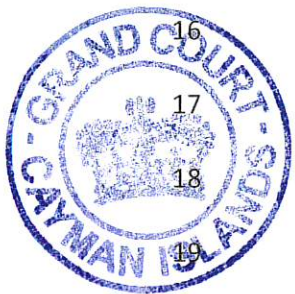
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14 116. It was argued that it may be easier to justify the interference if the same
15 mandatory retirement age applied to everyone. At such time, the only real
16 issue on justification was whether the age at which it was set was too low.
17 In this case it was argued, the issue was why should there be a difference
18 in treatment based on age.

19

20 117. Counsel for the Plaintiffs summarised by stating that requiring the Plaintiffs
21 to retire at age 55, subject to the issue of justification constituted a breach
22 of their rights under sections 9.

23



1 118. Counsel for the Plaintiffs conceded that section 16 of the Bill of Rights was
2 not a freestanding anti discriminatory provision but rather was utilised in
3 cases of discrimination in respect of other rights provided for in the Bill of
4 Rights. The provisions of section 16 of the Bill of Rights are similar to Article
5 14 of the ECHR. That states:

6
7 *“The enjoyment of the rights and freedoms set forth in this Convention*
8 *shall be secured without discrimination on any ground such as sex,*
9 *race, colour, language, religion, political or other opinion, national or*
10 *social origin, association with a national minority, property, birth or other*
11 *status.”*

12
13 119. In this case the Plaintiffs invoked section 16 due to alleged discrimination
14 on the grounds of age and national origin.

15



1 120. Counsel argued that the forced retirement of police officers for a reason
2 related solely to an inalienable part of their identity, their age, had an
3 adverse impact on their personal relationships and financial well-being, thus
4 falling within section 9. This having been established, because treatment
5 afforded to the Plaintiffs was different from the treatment afforded to
6 younger officers and different from those officers recruited from the United
7 Kingdom then section 16 which prohibits discrimination on the basis of age
8 and national origins, is engaged. The treatment can only be justified in
9 accordance with the provisions of section 16(3) and 16 (4).

10

11 121. The Plaintiffs claimed that younger and/or British officers had a right to work
12 until the age of 60 without loss of rank on their existing contractual terms
13 and as such the Plaintiffs ought to have had that right as well.

14

15 122. Counsel for the Plaintiffs also submitted that once section 21 of the 2010
law changed the retirement age from 55 to 60 for some officers, it became
much more difficult to justify the younger retirement age for the others.

16

19 123. It was further submitted that it was not necessary for the engagement of
20 section 16 for the Plaintiffs to have been prevented from exercising a right.
21 It also did not require the removal of any right from the Plaintiffs.

22



1 124. In Carson & Reynolds v Secretary of State for Work and Pensions
2 [2007] EWCA Civ 797, neither Complainant was deprived of anything.
3 However the comparator group received benefits that the Claimants did not
4 and as such was favoured. The Court of Appeal accepted that Article 14
5 was engaged. Eventually the Claimants failed because justification was
6 established.

7
8 125. Counsel for the Plaintiffs also referred to R (Tigere) v Secretary of State
9 for Business Innovation and Skills [2015] UKSA 57. The Claimant in that
10 case was not entitled to a student loan because of her nationality.
11 Consequently due to her status, she was not entitled to a benefit that others
12 were. Her claim under Article 14 of the ECHR succeeded.

13
14 126. In summary, Counsel for the Plaintiffs submitted that once the comparator
15 group has an enhanced entitlement, section 16 was engaged. It was not
16 necessary to demonstrate that the Plaintiffs had been deprived of anything.

17
18



1 **Discrimination on the Grounds of National Origin**

2

3 127. Section 20 of the Police Law (2014 Revision) empowers the Commissioner
4 of Police to recruit officers from outside of the Cayman Islands and on such
5 contractual terms as appear necessary. These are referred to as “special
6 contracts”. The retirement age imposed by section 21 (7) of the same law
7 does not apply to these contracts.

8

9 128. It was admitted by the Defence that there was no policy of reducing the rank
10 of these officers once they reach the age of 55. Consequently, in 2014
11 statistics showed that all of the inspectors and the only sergeant; who were
12 serving in the RCIPS beyond the age of 55, were all British.

13

14 129. Consequently the issue of discrimination on the basis of nationality refers
15 to officers from United Kingdom not being required to retire at age 55 and
16 further that officers recruited from the United Kingdom maintain their
17 existing rank once they passed the age of 55 and are not required to enter
18 a new contract at a lower rank.

19

20 130. It was submitted that all the officers, whether local or from the United
21 Kingdom did the same work and worked alongside each other. There was
22 no material difference.

23



1 131. Counsel for the Plaintiffs rejected the Defence proposition that the
2 difference between these officers arose because of the material difference
3 in their contractual terms and as such was not comparable.

4

5



1 **Defence Submissions on Sections 9 & 16 of The Bill of Rights**

2
3 132. Counsel for the Defendants disagreed with the Plaintiffs' submission
4 concerning section 21 (7) of the 2014 Law that the requirement for the
5 retirement of non-gazetted officers hired before the effective date and the
6 re-engagement policy, interfered with the officers' rights to respect for family
7 and private life under section 9. Counsel for the Defendants submitted that
8 section 9 of the Bill of Rights was not engaged.

9
10 133. Counsel agreed with the position stated by the European Court of Human
11 Rights (ECtHR) that the term "private life" was a broad one and was not
12 susceptible to exhaustive definition. Counsel approved of the statement in
13 the *Niemietz* case that the right to respect for private life "*must also*
14 *comprise to a certain degree the rights to establish and develop*
15 *relationships with other human beings*" including relationships that are
16 developed at work. It was argued however that the section neither conferred
17 the right to work in a particular profession nor the right to continue working
18 in a particular profession indefinitely.



1 134. Counsel submitted, based on Friend & The Countryside Alliance v
2 United Kingdom [2010] 50 EHHR SE6 that:

3

4 *“it cannot be said that, because an activity allows an individual to*
5 *develop relationships, it falls within the scope of Article 8 such that any*
6 *regulation of that activity will automatically amount to an interference*
7 *with that individual’s private life.”*

8

9 135. According to Counsel for the Defendants, the United Kingdom domestic
10 courts have held that article 8 is engaged in circumstances in which an
11 individual experiences considerable stigma as a result of treatment
12 complained of and that stigma will adversely affect the individual’s personal
13 relationships: R v (Wright & Ors) v Secretary of State for Health & Anor
14 [2009] 2 WLR 267.

15

16 136. Further, it was submitted that in the *absence* of stigma or reputational
17 damage, article 8 is unlikely to be engaged, Turner v East Midlands Trains
18 Ltd [2012] EWCA Civ 1470.

19



1 137. The case of Volkov v Ukraine [2013] IRLR 480 was cited as being
2 applicable. At paragraphs 166-167, this stated:

3

4 *“The dismissal of the applicant from the post of judge affected a wide*
5 *range of his relationships with other persons, including relationships of*
6 *a professional nature. Likewise, it had an impact on his ‘inner circle’ as*
7 *the loss of job must have had tangible consequences for material well-*
8 *being of the applicant and his family. Moreover, the reason for the*
9 *applicant’s dismissal, namely the breach of the judicial oath,*
10 *suggested that his professional reputation had been affected.*

11

12 *It follows that the dismissal of the applicant constituted an interference*
13 *with his right to respect for private life within the meaning of article 8 of*
14 *the Convention.”*

15

16 138. Counsel for the Defendants emphasised that the cases support the
17 proposition that article 8 was not engaged by dismissal simpliciter; and that
18 evidence of stigma or damage to the reputation of the applicant in question
19 will be required.



1 139. Counsel for the Defendants argued that the termination of the Plaintiffs'
2 employment upon reaching the applicable statutory retirement age attracted
3 little or no stigma or reputational damage. All affected officers were required
4 to retire at that age irrespective of their performance or personal conduct.
5 Consequently the cessation of employment was not fault based. Further,
6 mandatory retirement of police officers, whether at 55 or some other
7 prescribed age; placed the officers in no different position from other public
8 officers who are required by law to cease their employment at a particular
9 age. On the basis of this it was again submitted that section 9 of the Bill of
10 Rights was not engaged by the mandatory retirement at the age of 55 as
11 per section 21 (7) Police Law (2014 Revision).

12

13 **The Re-engagement Policy**

14

15 140. Counsel for the Defendants argued that the fact that section 20 (1) of the
16 2006 law, like section 21 (1) of the 2010 law expressly contemplates that
17 affected officers might be re-engaged for further fixed term periods of
18 service beyond retirement age, further weakened the assertion that section
19 9 of the Bill of Rights was engaged.



1 141. It was claimed that for the majority of the Plaintiffs, mandatory retirement
2 lacked the “concomitant consequence of severing relationships with co-
3 workers” that pointed to article 8. It was argued that in most instances the
4 Plaintiffs were able to continue employment within the police force or
5 elsewhere and enjoy the social relationships within their working
6 environment.

7

8 142. It was argued on behalf of the Defendants that since the mandatory
9 retirement of affected officers did not engage section 9, it was not
10 reasonable to state that giving officers an opportunity to continue in
11 employment beyond retirement age, although in a modified capacity; and
12 by extension facilitating continued relationships with colleagues within the
13 workplace would engage section 9.

14

15 143. Since satisfactory performance was one of the threshold criteria to be taken
16 into account when considering whether to reengage an officer, acceptance
17 for re-engagement even at a reduced rank entailed the recognition that the
18 officer had performed well and not poorly.

19



1 144. It was further argued that the colleagues of the affected officers could
2 reasonably be expected to be aware of the mandatory retirement age and
3 the criteria against which requests for re-engagement are assessed, there
4 was no reason to think that they would automatically lower their opinion of
5 re-engaged officers or devalue their experience simply because there was
6 a loss of rank upon re-engagement.

7
8 145. In summary the Defendants argued that neither section 21 (7) of the 2010
9 law as preserved in the 2014 Revision nor the administrative practice
10 whereby officers who were re-engaged beyond retirement age were
11 expected to return at the rank of Constable engaged section 9 of the Bill of
12 Rights.

13
14 146. The Defendants further argued that even if the section was engaged, there
15 had been no interference with the Plaintiff's rights under section 9.

16
17 147. Counsel then referred to section 16 as taken together with section 9.

18
19 148. Counsel for the Defendants accepted that section 16, only applied where
20 the facts in issue fell within the ambit of another right. It was their submission
21 that since section 9 of the Bill of Rights was not engaged, then section 16
22 did not apply.
23



1 149. Counsel for the Defendants argued that there was no direct discrimination
2 on the basis of age for the affected Plaintiffs. It was submitted that section
3 21 (7) affected some because of rank, being non-gazetted and their date of
4 hire, which was prior to the effective date.

5

6 150. Counsel submitted that the Plaintiffs' circumstances were not analogous or
7 relevantly similar to officers who were hired in roles which were previously
8 referred to as non-gazetted; after the effective date. This was because the
9 terms and conditions of employment for the Plaintiffs included an
10 entitlement to receive a full pension from age 55 onwards and prior to the
11 2016 amendment, included a requirement to retire at age 55 without any
12 entitlement to re-engagement.

13

14 151. It was also argued that section 21(7) was not indirectly discriminatory.

15

16 152. It was argued that it was not shown that any difference in treatment created
17 by section 21(7) between the Plaintiffs and officers hired after the effective
18 date of similar rank, could be fairly characterized as less favourable. It was
19 submitted that "discrimination" implies that the affected officers were not
20 only treated differently but also less favourably. It was submitted that it was
21 not clear that this criteria had been met because the impact and
22 consequences of retirement varied from person-to-person.

23



1 153. It was the contention of the Defendants that retirement provided many
2 former police officers with the unique opportunity to leave the force on good
3 terms, at an age at which alternative career and other opportunities could
4 be fruitfully pursued, while enjoying the financial benefits of an immediate
5 pension. Reference was made to the evidence of John Kim Evans Jnr that
6 the majority of the officers considered retirement at age 55 or after 21 years'
7 service as advantageous. It was submitted that it was on this basis that it
8 had been advocated that the existing retirement arrangements be continued
9 for serving officers when changes to the Police Law were proposed prior to
10 2010. Comments made by the Human Rights Commission also appear to
11 support this argument about the basis of the retention of existing provisions.

12
13 154. The Defendants went on to argue that if the Court found that there had been
14 interference with section 16 as read with section 9, any such interference
15 was objectively and reasonably justified.

16

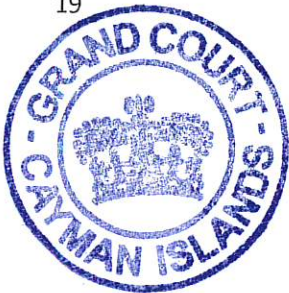


1 155. It was submitted that age-based distinctions attracted a relaxed standard of
2 scrutiny. The Defendants challenged the Plaintiffs' assertion that the
3 inclusion of age as a prohibited ground of discrimination in section 16 of the
4 Bill of Rights amounted to recognition of the increasing importance of age
5 as a protected characteristic. The Defendants, citing ECtHR jurisprudence,
6 argued that no relationship existed between the explicit identification of
7 particular criterion and the question whether that criterion should be treated
8 as "suspect".

9
10 156. They referred to dicta from R(Carson) v Secretary of State for Work and
11 Pensions [2005] UKHL 37 and Seldon v Clarkson, Wright & Jakes
12 [2012] UKSC 16. It was argued, that these cases established that while
13 age is an "immutable" characteristic in that each individual is powerless to
14 change his or her age, age differed from typical "suspect" grounds like race
15 or sex in the sense that it does inevitably change over time.

16
17 157. The Defendants went on to argue that section 21(7) of the Police Law (2014
18 Revision) had a legitimate aim and satisfied the test of proportionality.

19



1 158. It was submitted that the section was a transitional arrangement which was
2 designed to preserve the entitlement of serving officers to retire with a full
3 pension at age 55 or after 21 years' service. The Defendants claimed that
4 the section was justifiable by reference to section 9 (3) (b) of the Bill of
5 Rights which dealt with the protection of the rights and freedoms of other
6 persons.

7
8 159. It was argued that courts applying European Union law have held that
9 transitional provision that protect the rights and freedoms of employees are
10 justified. Transitional provisions under the Police Law were meant to
11 cushion the blow for older workers upon the introduction of a change in
12 retirement age. The officers who were in the system already would have
13 expected to retire on a particular date and could have been adversely
14 affected by any increase in the retirement age.

15
16 160. It was argued on behalf of the Defendants that the evidence established
17 that when the policy decision was made to increase the retirement age of
18 all police officers to 60, there was advocacy for the retention of the existing
arrangements for serving non-gazetted officers. The members of the First
Plaintiff wished to retain their accrued entitlements to retire after 21 years'
service or at age 55. It was submitted that in the absence of contrary
representations, the government and the legislature should not be
penalized for acceding to this request.

23



1 161. It was noted that it was denied on behalf of the First Plaintiff that they had
2 been the body which had been consulted about the changes to the Police
3 Law.

4
5 162. The Plaintiffs accepted that the introduction of transitional provisions in
6 principle and in an appropriate case was capable of serving legitimate aims.

7
8 163. However, it was argued, the measure in question must be both appropriate
9 to achieve its legitimate aim or aims and necessary in order to do so, and
10 the gravity of the effect upon the employees discriminated against has to be
11 weighed against the importance of the legitimate aims in assessing the
12 necessity of the particular measure chosen.

13
14 164. Counsel for the Plaintiffs rejected the response on behalf of the Defendants
15 that interference under section 9 was reasonably justifiable in a democratic
16 society for the purpose of protecting the rights and freedoms of others
17 namely the protection of the acquired rights of the First Plaintiff's members
18 to retire with a pension at age 55. It was submitted that this was not
19 concerned with protecting the rights and freedoms of others.



1 165. Counsel also argued that requiring some officers to retire at age 55 did not
2 protect their pension. It was recognised that officers WHO retired at age 55
3 drew their pension earlier but it was argued that this could have been
4 achieved if officers were given a choice of whether to retire at age 55 or to
5 continue to serve until age 60 which had been done under the 2016
6 amendment.

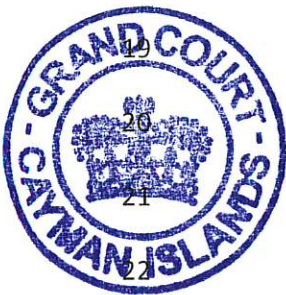
7
8 166. It was argued that where a law is discriminatory the justification
9 requirements have to be applied strictly.

10

11 167. Counsel for the Plaintiffs also pointed out that the Defendants had not
12 pleaded "Justification" as it related to the retirement age, in their Defence.

13

14 168. Counsel for the Defendants attacked the assertion on behalf of the Plaintiffs
15 that requiring some police officers to retire at the age of 55 years would not
16 protect their pension. The Defendants argued that the essence of their
17 position was that it was not merely a pension that was preserved for these
18 officers but rather the full extent of their cumulative retirement and pension
19 entitlements under the law. This included the ability to leave the physically
20 demanding and sometimes dangerous operational police duties on good
21 terms and at an age at which a second career could be a viable opportunity
22 and additionally to receive the immediate financial cushion of a pension.



23

1

2 169. In response to the contention that the appropriate measure would have
3 been a statutory provision for retirement options akin to that which is
4 contained in section 8 of the 2016 amendment; the Defendants again
5 referred to the express representations made for the retention of existing
6 retirement rights. It was submitted that in the absence of contrary
7 representation the government was not required to provide any mechanism
8 as suggested by the Plaintiffs.

9

10 170. The Defendants went on to argue that there was also no nationality
11 discrimination. The Defendants asserted that the allegation of nationality
12 discrimination was directed at:

13

- 14 (i) Section 21(7) of the 2010 law based on the assertion that it was
15 not applied to officers of the British nationality; and
16 (ii) The administrative practice whereby re-engaged officers were
17 expected to return at the rank of Constable which allegedly
18 exempted British officers as a matter of practice.

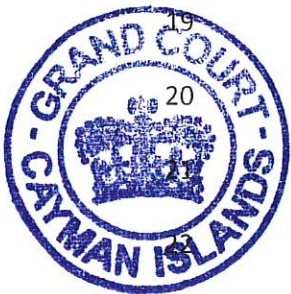
19



1 171. As stated previously, the evidence in the case made reference to officers
2 who were British and who served at ranks above Constable beyond their
3 55th birthdays. They were: Sean Bryan; Peter McLoughlin; Richard Oliver;
4 Dennis Walkington and Ian Brellisford. While each had differing individual
5 circumstances, Counsel for the Defendants argued that each had unique
6 training and experience in their own particular sphere and this they brought
7 to their roles with the RCIPS. Their training and experience were relevant
8 to tasks that the RCIPS engaged in at the time and there were no local
9 candidates who could have been employed to undertake those roles.

10
11 172. It was argued that in order for a difference in treatment to amount to
12 discrimination it had to be *“established that other persons in an analogous
13 or relevantly similar situation enjoy preferential treatment, and that there is
14 no reasonable or objective justification for the distinction”* (**Neill & Ors v
15 United Kingdom Application No. 56721/00, 29 January 2002**).

16
17 173. It was the contention of the Defendants that the circumstances of the British
18 officers were not genuinely analogous to those of the Plaintiffs. Each was
19 engaged on a “special” contract pursuant to section 20 of the 2010 law.
20 Under the law special contracts were subject to such contractual terms as
may appear necessary to the Commissioner of Police.



1 174. Special contracts were only used where there is no suitably qualified local
2 candidates able to fill a specific vacancy that had arisen within the police
3 force. By their nature, special contracts tend to be offered in respect of high-
4 ranking positions and to candidates with substantial specialized and
5 relevant experience. It was argued that the Plaintiffs in this case were not
6 doing the same sort of work as the named special contract holders.

7
8 175. Special contracts according to section 20 may be offered to any officer
9 enlisted from outside the Cayman Islands regardless of nationality. As such
10 the assumption that all officers hired on special contracts are *of necessity*
11 from the United Kingdom, is a mistaken one.

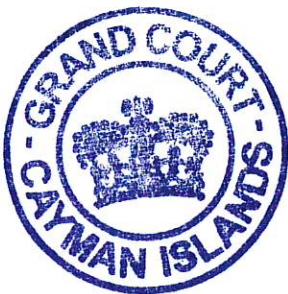
12
13 176. Counsel for the Defendants submitted, as testified by the Commissioner of
14 Police that any overrepresentation of British officers among special contract
15 holders in high-ranking roles was a reflection of the fact that as a British
16 Overseas Territory, the Cayman Islands followed a predominantly United
17 Kingdom system of policing based on the English common law. Applicants
18 from the United Kingdom for externally advertised vacancies tended to have
had opportunities to receive relevant training and attained required
accreditation that set them apart from applicants from other countries.



1 177. Additionally and perhaps most importantly was the position of Sgt. Davis
2 Scott. As a Caymanian officer who had retired with the rank of Constable,
3 he was reengaged on a fixed term contract, at the rank of Sergeant. It was
4 considered that his ties to the East End community uniquely qualified him
5 to lead a small proactive team that was created to address increasing
6 criminality in that district.

7
8 178. According to Counsel for the Defendants Sergeant Scott is an example that
9 the re-engagement policy was flexible enough to permit exceptions where
10 the Commissioner of Police considered that a retired Caymanian officer's
11 skills and abilities were required to meet a particular need in the force.
12 Further, this weakened the assertion by the Plaintiffs that the ability to work
13 after retirement age at a rank above Constable was purely a question of
14 British nationality.

15
16



1 **Justification**

2

3 179. Counsel for the Defendants further submitted that if the Court found that
4 section 9 had been engaged and thereby section 16 as well, and that the
5 difference in treatment was found to interfere with section 16 on nationality
6 grounds, any such interference was justified. The re-engagement policy
7 served a number of important objectives that were facilitated by having a
8 mandatory retirement age for police officers. It facilitated career
9 development and upward mobility for junior officers, efficient planning for
10 the departure and promotion of staff and in some cases it avoided
11 potentially humiliating disputes about the retiring officer's ability to continue
12 in their current position and at their current rank.

13

14 180. The re-engagement policy was arguably a necessary corollary of the
15 mandatory retirement age because without it, the objectives of the
16 mandatory retirement age would be undermined. If re-engaged officers
17 were able to continue in employment at exactly the same rank they
18 occupied prior to retirement, the career development and upward mobility
19 of more junior officers would not be facilitated. It was argued that the
20 administrative practice regarding rank is a natural and logical consequence
21 of having a mandatory retirement age for police officers and the practice is
22 justified by reference to the same objectives.

23



1 181. Any argument that the re-engagement policy should be applied to special
2 contract holders as well as locally enlisted officers was rejected by the
3 Defendants. As stated previously, special contracts are offered only
4 because suitably qualified local candidates were not available. The
5 demotion of the special contract holder at age 55 would not further the
6 objectives of the mandatory retirement age. Additionally since the special
7 contracts tend to be in relation to senior and high-ranking positions the
8 application of the re-engagement policy could prejudice the ability of the
9 RCIPS to retain staff whose skills and experience were essential to the
10 needs of the organization.

11

12 **Section 19 of The Bill of Rights**

13

14 182. Counsel for the Plaintiffs made submissions concerning the Plaintiff's claim
15 under section 19 of the Bill of Rights.

16

17 183. Counsel submitted that the Plaintiffs had a freestanding claim under this
18 section.

19

20 184. It was argued that the policy of re-engaging Caymanian police officers who
21 have retired at the age of 55 on contracts at the rank of Constable or below
22 was not required by legislation but rather was an administrative policy of the
23 RCIPS. That fact was not in dispute.



1 185. It was argued that where some officers of the RCIPS were able to work until
2 age 60 without loss of rank and others were recruited from overseas on
3 contracts and were able to work after age 55 without loss of rank, it was
4 irrational to impose this restriction.

5
6 186. It was submitted that this irrationality not only affected the Plaintiffs who
7 were re-engaged at the lower rank but also those Plaintiffs who were put off
8 from reapplying for re-engagement because of the reduction in rank
9 imposed by the policy.

10
11 187. It was argued that the reasons for the policy which were given by the former
12 Commissioner of Police may have had some logic if all officers were treated
13 the same. Since that was not the case the reasons given were undermined
14 and the policy became irrational.

15
16 188. It was argued that the effect of the policy was to treat officers in comparable
17 circumstances differently because of their age. It was argued that the policy
18 should have been changed on the introduction of the 2010 law to allow
19 officers to be re-engaged at their existing rank if they so applied over the
20 age of 55.



1 189. The Defendants did not accept the assertion by the Plaintiffs that it was
2 irrational to apply the re-engagement policy to the Plaintiffs where there
3 were other officers in the RCIPS who were able to work until age 60 without
4 loss of rank and where other officers, recruited from overseas on contracts,
5 were able to work after age 55 without loss of rank. The Defendants
6 reiterated their position that the re-engagement policy was a necessary
7 corollary to the mandatory retirement age.

8

9 190. It was argued that having been statutorily mandated by section 21 (7) to
10 retire officers hired in non-gazetted roles before the effective date at age
11 55, the First Defendant should not be criticized for continuing to apply the
12 long-standing re-engagement policy to those officers at the point at which
13 they became subject to mandatory retirement. The position of officers
14 recruited from abroad on special contracts was not relevant for the reasons
15 cited before. Additionally for the reasons cited before, retiring those officers
16 at age 55 would defeat the objective of retaining specialist skills not readily
17 available within the local police force.

18

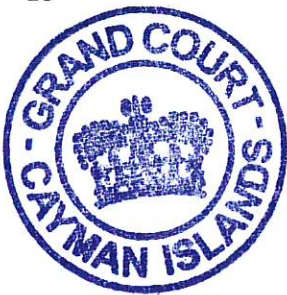


1 191. Counsel for the Defendants also relied heavily on the broad discretion
2 granted to the Commissioner of Police as the appointing officer of the force
3 concerning matters of recruitment. Under the 2010 law and preserved in
4 subsequent Revisions, the Commissioner had the general “command,
5 superintendence and direction of the Service and may... make such
6 appointments and promotions in respect of police officers as he sees fit”. It
7 was argued that the Commissioner of Police was best placed to determine
8 the staffing and other needs of the organization at any given time and that
9 deference should be accorded to him regarding the application of the re-
10 engagement policy.

11

12 192. Counsel submitted that at all material times it was for the First Defendant to
13 determine how best the objectives identified, were to be achieved within the
14 context of recruitment. The First Defendant it was argued, was empowered
15 by the legislature to make the type of organizational decisions that he made,
16 in recognition of the fact that he had a superior “on the ground” knowledge
17 of the prevailing conditions of the organization.

18



1 193. It was pointed out that the evidence of the First Defendant was that in
2 applying the re-engagement policy to the relevant Plaintiffs, the First
3 Defendant took steps to minimize the financial impact of re-engagement at
4 the lower rank by offering remuneration on the lower pay scale that most
5 closely approximated the previous salary of the relevant Plaintiff, within the
6 constraints of civil service policy. It was submitted that the First Defendant's
7 application of the policy to the Plaintiffs should not be viewed in isolation
8 from his recognition of the implications of the policy for them and his efforts
9 to mitigate these.

10
11 194. Finally it was submitted that the circumstances of Sgt. Davis Scott
12 demonstrated that the re-engagement policy was capable of being applied
13 with sufficient flexibility to avoid any irrationality in its application.

14
15 195. In summary the Defendants rejected the Plaintiffs' challenge to the
16 lawfulness, rationality or proportionality of the RCIPS's administrative
17 practice of the re-engagements of officers at reduced rank pursuant to
18 section 19 of the Bill of Rights, as being without merit.



1 **Disputed Facts**

2

3 196. There are few areas of factual disputes in this matter.

4

5 197. One area of dispute was the assertion by the First Plaintiff that at the
6 meeting with the Honourable Attorney General and the Honourable Premier
7 in October 2013, one or both of those gentlemen stated that the provisions
8 of the Police Law at the time were discriminatory. I find as a fact that this
9 was not said by either of the men. I find that the Honourable Premier
10 indicated that they would look closely at several issues which had been
11 raised by the First Plaintiff.

12

13 198. An area of dispute related to whether the First Plaintiff had any formal input
14 to the changes in the Police Law which led to the “controversial” section
15 21(7) of the Police Law, 2010.

16

17 199. I accepted the evidence of Mr. John Kim Evans that he had passed on to
18 the relevant committee, representations which had been made to him in his
19 capacity as President of the First Plaintiff, concerning changes to the Police
20 Law. I find as a fact that pursuant to these representations, he had
21 recommended that existing retirement arrangements for non-gazetted
officers be retained.



1 200. I find as a fact that Mr. Evans had no further dealings with the matter after
2 he left the police force and I also find that the First Plaintiff made no formal
3 representations on the matter at the time of the changes.
4

5 201. I do accept as fact the evidence of the Honourable Mr. Bulgin, QC that the
6 Commissioner of Police had nominated a point person within the Royal
7 Cayman Islands Police Service to liaise with the government during the
8 process. This was Deputy Commissioner of Police Ennis.
9

10 202. The correspondence and memorandums which date between February
11 2010 and July 2010 showed the various drafts that the amendments to the
12 Police Law went through.
13

14 203. In particular, correspondence between the Legislative Drafting Department
15 and the Honourable Attorney General dated July 2, 2010 which references
16 meetings of the Police Bill 2010 Review Team which led to new insertions
17 (to the Bill) to allow for:
18

19 *“continued application of section 20 of the Police Law (2007 Revision)*
20 *in relation to police officers appointed prior to the commencement of the*
21 *Law”.*



1 204. Following a further meeting, an email dated July 16, 2010 from the
2 Legislative Drafting Department to the Honourable Attorney General
3 exhibited the latest Police Bill, 2010 which contained the new provisions of
4 section 21 (7).

5
6 205. Thereafter, a Memorandum to the Cabinet Secretary from the Acting
7 Attorney General dated 23 July 2010 referenced:

8
9 *“changes made as a result of the consultative meetings of the Members*
10 *of the Legislative Assembly held on May 24th and June 1st, 2010”.*

11
12 206. The amendments referred to therein included the words –

13
14 *“A new subsection is inserted to provide for the continued application of*
15 *section 20 of the Police Law (2007 Revision) in relation to police officers*
16 *appointed prior to the commencement of the Law”.*

17
18 207. Prior to the new amendment, provisions concerning retirement in the Police
19 Bill reflected a rise in the age for retirement or an extension in the period of
20 service before early retirement could be taken. It is not difficult to appreciate
that this would have caused consternation in officers who were “counting
down” the days until retirement.



1 208. Based on the foregoing, I find as a fact that the government received
2 communication that there were non-gazetted officers within the RCIPS who
3 did not wish to lose their accumulated right to retire at age 55 or after 21
4 years of service. I found no basis to conclude that representations to the
5 contrary were made.

6
7 209. With reference to the Third Plaintiff's application for reengagement after
8 retirement, in the post of Sergeant. I find as a fact that the Commissioner of
9 Police was entitled to act according to the recommendations of the
10 supervisors of the Third Plaintiff. This led to him denying her request after
11 giving it due consideration. She clearly stated that she did not apply to be
12 reengaged as a Constable after retirement.

13
14 210. The Third Plaintiff may have a remedy as it relates to the inconsistencies
15 between the content of her Performance Development Reviews and
16 comments made by her supervisors about her work ethic, but it is not to be
17 found in this action.

18
19 211. Based on her own testimony I find that the Third Plaintiff's relationships with
20 her former colleagues changed after her retirement but they did not
21 deteriorate. She did not suffer in reputation and there is no stigma attached
to her mandatory retirement.



1 212. Based on the Commissioner's evidence, I accepted that the Second
2 Plaintiff's factual circumstances differed sufficiently from that of Inspector
3 Sean Bryan to justify the difference in the contracts offered to each.
4

5 213. I find as a fact that the Second Plaintiff found it embarrassing to have been
6 re-engaged as a Senior Constable having previously been an Inspector
7 before retirement. It is also accepted that many officers including the
8 Commissioner of Police would find such a reduction in rank embarrassing.
9

10 214. I do not find that the mandatory retirement of the Second Plaintiff caused
11 him to suffer in reputation. Based on his own testimony, his colleagues still
12 treat him with respect. Also based on his testimony, he is still able to
13 contribute positively to the RCIPS in his new role as Senior Constable. His
14 embarrassment upon reengagement at a lower rank was not due to any
15 treatment he received from others.
16

17 215. I find as a fact that the British officers: Sean Bryan; Peter McLoughlin;
18 Richard Oliver; Dennis Walkington and Ian Brellisford each had unique
19 training and experience in their own particular sphere. I find that their
20 training and experience were relevant to tasks that the RCIPS engaged in
21 at the time of their recruitment. Further, there had been no local candidates
who could have been employed to undertake those roles.



1 216. I find that they were employed under “special contracts” and that pursuant
2 to section 20 of the Police Law, 2010 the Commissioner of Police had an
3 absolute discretion to consider the needs of the RCIPS and to engage such
4 officers upon such terms as would allow him to meet those needs.

5

6 217. I do not find that the employment and retention of the five named officers
7 was based on their nationality. I find that these were the persons who could
8 be found to do the jobs for which they were hired.

9

10 218. I find that Officer Davis Scott is an example of a local officer who was
11 required to do a special job. I find that in re-engaging with him, for duties in
12 the East End, it was necessary for the Commissioner of Police to offer
13 particularly attractive terms to him. I find that this was the reason that post
14 retirement, he was re-engaged in the post of Sergeant which constituted a
15 promotion from the rank from which he had previously demitted office. I
16 further find that the re-engagement and retention of Officer Scott in this post
17 the age of 55 years establishes that there was no policy whereby favourable
18 terms were only offered to British nationals.

19



1 **Conclusion**

2

3 219. At the outset of proceedings, I had found that the claims of the Second,
4 Fifth, Sixth, Eighth, Ninth and Tenth Plaintiffs had been filed out of time due
5 to the statute of limitations.

6

7 220. Counsel on both sides agreed that section 26 (4) of the Bill of Rights gave
8 the Court a wide discretion to extend time. Upon hearing further
9 submissions I concluded that it would be in the interests of justice to extend
10 time in this matter.

11

12 221. Consequently I allowed the Plaintiffs who had been barred by my previous
13 ruling, to proceed.

14

15 222. Under section 20 of the Police Law (2006 Revision) non-gazetted officers
16 were required to retire at age 55 years. Additionally, a non-gazetted officer
17 who had served for 21 years could retire on pension. In the Police Law,
18 2010 the distinction between gazetted and non-gazetted officers was
19 removed. Section 21 (1) of that law now stated that a "police officer" had to
20 retire at age 60. Section 21 (2) thereof allowed a police officer who had
21 served for 30 years to retire.



1 223. The "problem" with the new law arose with section 21 (7) which indicated
2 that these new provisions of the law did not apply to a police officer who
3 had been appointed prior to the date of commencement. As stated before
4 the effective date was November 22, 2010 and police officers who began
5 serving prior to that date and who had been classified as non-gazetted
6 officers were still required to retire at age 55 years or had the option to retire
7 after 21 years of service.

8

9 224. The complaints about the legislation were coupled with complaints about
10 the reengagement policy practiced by the RCIPS. Under this policy, non-
11 gazetted officers who retired on pension were accepted for further periods
12 of service but only at the rank of Constable.

13

14 225. Being required to retire at the age of 55 years while officers who had
15 contracted after they had been, were allowed to work until age 60 was
16 cited as unfair. Additionally being forced to work at the rank of Constable
17 after age 55, if reengaged, while British Officers could be re-engaged at
18 their existing rank after age 55 was also cited as unfair.

19

20 226. The allegation was that the rights of the Plaintiffs under section 9 of the Bill
21 of Rights were breached on the grounds of age discrimination when they
were forced to retire at age 55. This was due to the adverse effect on their
personal lives and relationships. There were also financial repercussions.



1 227. The reengagement policy was considered degrading and embarrassing. Its
2 terms either prevented retired officers from returning to the police force or
3 engendered deep feelings of humiliation in those that did.

4
5 228. Based on their own evidence, both the Second and the Third Plaintiffs were
6 aware, upon contracting with the RCIPS that they faced a mandatory
7 retirement age of 55 years and each stated that they made plans for this.

8
9 229. Again, based on their own evidence, retirement did not affect their personal
10 relationships. The Third Plaintiff admitted that her relationship with her
11 fellow police officers did not end because she left the workplace, it merely
12 changed because they saw each other less frequently. As even she
13 conceded, such an occurrence was not peculiar to retirement from police
14 employment.

15
16 230. They each had a right upon retirement to apply to be re-engaged and they
17 each knew that according to policy, this would be at the rank of Constable.
18 They were not obligated to pursue this option and in fact one of them did
19 not. There is a difference between mandatory retirement in which they had
20 no choice, and the re-engagement policy which neither had to pursue.



1 231. The embarrassment experienced by the Second Plaintiff upon being re-
2 engaged as a Constable was not due to his retirement. Despite his initial
3 embarrassment, he stated that his colleagues still showed him respect on
4 the job.

5

6 232. As submitted by Counsel for the Defendants, the Second Plaintiff's fellow
7 officers would be aware of the age at which requirement was required. They
8 would also know that after mandatory retirement he could only continue to
9 serve in the police force as a Constable. There could be no suggestion that
10 he had been demoted due to a lack of skill or competence.

11

12 233. As such there was no stigma or reputational damage attached to required
13 retirement at age 55.

14

15 234. I accepted the submission that the re-engagement policy which gave
16 officers an opportunity to continue their working relationship with colleagues
17 could not engage section 9.

18

19 235. I also found that officers hired under special contracts were not subject to
20 the terms of the reengagement policy for practical reasons. The posts
sought to be filled could not be filled locally and these were usually posts
which required senior officers.



1 236. In any event, the Commissioner of Police was well aware of the needs of
2 the police force and he had an absolute duty to meet those needs. He had
3 an absolute discretion to determine the contractual terms of each officer
4 engaged on a special contract; and he could not be fettered in the terms
5 that he used to attract and retain the necessary officers.

6

7 237. In the circumstances, there being an absence of stigma or reputational
8 damage, I do not find that section 9 of the Bill of Rights is engaged. While it
9 is not necessary to consider the provisions of section 16 of the Bill of Rights
10 I will still consider the issue of discrimination on the grounds of nationality.

11

12 238. The evidence concerning discrimination on the basis of nationality involved
13 the examples of five named British officers.

14

15 239. Based on my findings concerning officers: Davis Scott; Sean Bryan; Peter
16 McLoughlin; Richard Oliver; Dennis Walkington and Ian Brellisford, there
17 was no discrimination based on nationality. The argument that the RCIPS
18 practiced discrimination favouring British officers therefore fails.
19 Consequently I find that on the issue of age and nationality, there was no
20 breach of section 16 of the Bill of Rights.



1 240. Section 19 of the Bill of Rights provides as follows:

2

3 *“(1) all decisions and acts of public officials must be lawful, rational,*
4 *proportionate and procedurally fair.”*

5

6 241. In their claim, the Plaintiffs challenged section 21(7) of the Police Law, 2010.

7 As set out in submissions, the challenge was to the reengagement policy.

8

9 242. Both of these provisions have been considered.

10

11 243. It had been argued that on the basis of both provisions, local officers hired

12 prior to the effective date, were mandatorily retired at age 55 and were only

13 entitled to be re-engaged at the rank of Constable. It was also submitted

14 that this was a blanket policy applying to all local officers over the age of 55.

15

16 244. It had been further submitted that the reengagement policy was irrational

17 because it failed to treat like cases alike. Thus it allowed officers appointed

18 after the effective date to work until age 60 and it allowed British officers to

19 work on contracts while retaining their rank after the age of 55 and this was

20 discriminatory.



1 245. Based on my previous findings, the circumstances of the five British officers,
2 all of whom are on special contracts were distinguished. Officers hired on
3 Special contracts were not subject to the terms of the reengagement policy.
4 The argument concerning British officers is therefore rejected.

5

6 246. Based on my previous findings, I was satisfied that section 21(7) of the
7 Police Law, 2010 was the result of representations made to the government
8 when amendments to the Police Law were being considered. The point of
9 this section was to preserve the existing rights of persons who were
10 previously termed non-gazetted officers.

11

12 247. This was an entirely appropriate governmental action.

13



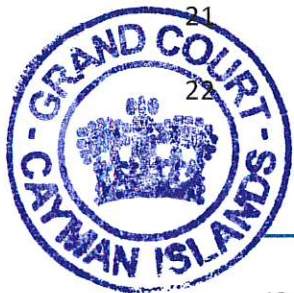
1 248. Counsel for the Defendants had submitted that the re-engagement policy
2 was a necessary corollary to the mandatory retirement age since without it
3 the objectives of the mandatory retirement age would be wholly
4 undermined. These were as set out in the evidence of former Commissioner
5 Baines:

- 6
- 7 a. *Facilitating the career development and upward mobility of more*
 - 8 *junior officers;*
 - 9 b. *Efficient planning of the departure and promotion of staff; and*
 - 10 c. *In some cases, avoiding potentially humiliating disputes about*
 - 11 *the officer's ability to continue in their current position and at their*
 - 12 *current rank.*
- 13

14 249. It was further argued that having been statutorily mandated by section 21
15 (7) of the Police Law to retire officers hired in non-gazetted roles before the
16 effective date at age 55, the First Defendant should not be criticised for
17 continuing to apply the long-standing reengagement policy to those officers
18 at the point at which they became subject to mandatory retirement.

19

20 250. There remains the issue of the way that the re-engagement policy affected
21 the Plaintiffs in this case.



1 251. It had been argued that the terms of the policy were so unattractive; they
2 prevented the Third and Eleventh Plaintiffs from applying for re-
3 engagement. However, the Defendants had submitted that these two
4 Plaintiffs were thereby barred from challenging the policy.

5
6 252. The Defence submission is accepted. I find that neither the Third and nor
7 the Eleventh Plaintiffs have standing to challenge the reengagement policy.

8
9 253. Having considered the submissions on this point, I determined that
10 notwithstanding the lawfulness of section 21 (7) of the Police Law, there is
11 a problem when it is coupled with the reengagement policy.

12
13 254. It was understood by all that after a non-gazetted officer retired at age 55,
14 he could only be re-employed at the rank of Constable. Such a blanket
15 policy, if applied to non-gazetted officers hired before the effective date,
16 would not be rational. Any such across-the-board policy which left no room
17 for exceptions would not speak to the ability of the Commissioner of Police
18 to determine the needs of the police force.

19
20 255. Such a policy with no room for exception would constitute a breach of
section 19 of the Bill of Rights.



1 256. However, there is the case of Officer Davis Scott. He is a Caymanian officer
2 who had been a non-gazetted officer hired before the effective date. While
3 he did not initially retire at age 55, he had retired as a Constable and was
4 rehired as a Sergeant. Further his contract to work as a Sergeant was
5 extended past the age of 55 years. His circumstances contradicted the
6 claim of the Plaintiffs that there was an across-the-board policy in relation
7 to re-engaging officers.

8
9 257. Apart from constituting a challenge to the allegation of discrimination on the
10 basis of nationality; Officer Davis Scott stands as an example that the re-
11 engagement policy was flexible. This is so despite the evidence of the
12 Commissioner that he tried to follow the directives of the Deputy Governor
13 when rehiring retired police officers.

14
15 258. As argued by the Defendants, Sergeant Scott's case showed that where the
16 Commissioner of Police considered that a local officer's skills and abilities
17 were required to meet a need in the force, an exception was made.

18
19 259. The example of Sergeant Davis Scott establishes that the reengagement
policy is not merely a blanket policy allowing officers who had been hired
prior to the effective date to only be rehired at the rank of Constable.



1 260. As a result of the foregoing, I do find that section 19 of the Bill of Rights has
2 not been breached.

3

4 261. Judgment is granted for the Defendants.

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7 Nova Hall
8 Acting Judge of the Grand Court
9 15th March 2018.

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