



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

**CAUSE NO: 64 OF 2021**

**BETWEEN:**

- 1) THE ROYAL CAYMAN ISLANDS POLICE ASSOCIATION**
- 2) SENIOR CONSTABLE MARK MILLER**
- 3) SENIOR CONSTABLE RODERICK EVANS**

**APPLICANTS**

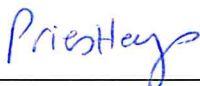
**AND:**

- 1) THE COMMISSIONER OF THE ROYAL CAYMAN ISLANDS  
POLICE SERVICE**
- 2) THE ATTORNEY GENERAL OF THE CAYMAN ISLANDS**

**RESPONDENTS**

**APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

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| To the Clerk of the Court, Law Courts, George Town, Grand Cayman |   |
| Name, address and description of applicants                      | The Royal Cayman Police Association.<br>Senior Constable Mark Miller<br>Senior Constable Roderick Evans<br><br>c/o Priestleys, Attorneys for the Applicants<br>Second Floor Caribbean Plaza<br>878 West Bay Road<br>Grand Cayman KY1-1202<br>P.O. Box 30310 |

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| <p>Judgment, order, decision or other proceeding in respect of which relief is sought</p>   | <p>The decision and action taken by the First Respondent regarding the implementation of the Uniform Shift Policy dated 1 January 2021 (defined below), and in particular USP Revised Leave Calculation (defined below) which substantially reduces the leave allowance for police officers.</p> |
| <p><b>Relief Sought</b></p> <ol style="list-style-type: none"> <li>1. A <i>Declaration</i> that the decisions and actions of the First Respondent in implementing the USP Revised Leave Calculation in accordance with the Uniform Shift Policy were/are unlawful;</li> <li>2. An order of <i>Mandamus</i> that the First Respondents immediately revoke the Uniform Shift Policy as far as it relates to the USP Revised Leave Calculation.</li> <li>3. An order of <i>Mandamus</i> that the policy in place prior to the implementation of the Uniform Shift Policy remains in place;.</li> <li>4. Damages sustained due to the unlawful implementation of the Uniform Shift Policy;</li> <li>5. Such further, consequential or other relief that this Honourable Court deems is just; and</li> <li>6. An order that the costs of and incidental to this application be paid by the First and Second Respondent.</li> </ol> |  |
| <p>Name and address of applicant's attorneys</p>  | <p>Priestleys,<br/> Second Floor, Caribbean Plaza,<br/> 878 West Bay Road,<br/> George Town,<br/> P. O. Box 30310,<br/> Grand Cayman, KY1-1202,<br/> Cayman Islands</p>  |
| <p>Signed<br/> </p>  | <p>Dated 31 March 2021</p>   |

## GROUNDS ON WHICH RELIEF IS SOUGHT

### Background

#### The Parties

1. The First Applicant is the Royal Cayman Islands Police Association (“**RCIPA**”), an incorporated association representing police officers who serve with the RCIPS.
2. The Second and Third Applicants are serving police officers with the Royal Cayman Islands Police Service (“**RCIPS**”) who is adversely affected by the Uniform Shift Policy (it is anticipated that application will be made to add further claimants in due course).
3. The First Respondent is the Commissioner of Police (“**COP**”) who was appointed and took up office in October 2016. His responsibilities include *inter alia* appointment of all police officers, with the exception of the Deputy Commissioner and Assistant Commissioner.

#### The Uniform Shift Policy

4. Following very limited meaningful consultation the RCIPS Uniform Shift Policy came into effect on 1 January 2021 (“**Uniform Shift Policy**”). Under “*Policy Statement*” it is indicated that the purpose of the Uniform Shift Policy is to determine “*how uniform police officers on shifts will be deployed to cover the Cayman Islands to deliver the services and responses necessary to achieve the strategic goals*”.
5. The Uniform Shift Policy is stated to be “*compliant with the Cayman Islands Constitution Order (2009), the Police Law (2017 Revision), the Police Regulations (1996), the Public Service Management Law (2018 Revision) and the Personnel Regulations (2019 Revision)*.”
6. Pursuant to the Uniform Shift Policy a “*4-on/4-off (8-day shift cycle)*” includes those police officers who work 7am – 7pm for the day shift and 7pm – 7am for the night shift (“**8 Day Shift Cycle**”). In each “*shift*” an officer on the 8 Day Shift Cycle is calculated to work “*11 hours each per shift*” being 38.5 hours per 7 day week.

7. Section 6 of the Uniform Shift Policy refers to “*Calculating Leave on the [8 Day Shift Cycle]*” which is purportedly “*in compliance with the Personnel Regulations (2019 Revision)*” (“**Personnel Regulations**”). The policy in issue is found at section 6.1 as follows:

*“[The Regulations], Schedule 1, section 5, subsections 1b & 1c require that annual leave days for shift based police officers are calculated as:*

- *Inspectors: 210.0 hours per year = 210.0/11 = 19 days per year;*
- *Sergeants: 187.5 hours per year = 187.5/11 = 17 days per year;*
- *Constables: 165.0 hours per year = 165.0/11 = 15 days per year.”*

**(“USP Revised Leave Calculation”)**

8. The UPS Revised Leave Calculation represents a significant reduction to the annual leave entitlement for shift-based police officers. This reduction is without the intervention of the legislature and for the reasons set out below it is submitted that it is unlawful, irrational and procedurally unfair and/or amounts to an abuse of power.

#### The Established Policy

9. The now repealed General Orders (1994 Revision) (“**General Orders 1994**”), set out the rules governing the “*conditions of service of public officers in the Cayman Islands Government, instructions for the conduct of public business and miscellaneous matters...*” and were applied to all people employed by government, including police officers.
10. Chapter 5 of the General Orders 1994 (at p.80 of RG-1) makes provision for police officers’ leave as follows:

Constable – 30 calendar days, Sergeant – 34 calendar days, Assistant Inspector – 38 calendar days, Chief Inspector and above – 42 calendar days.

11. The General Orders (2005 Revision) (“**General Orders 2005**”) amended the General Orders 1994 but provided “*Although the sections relating to terms and conditions of a civil servant’s employment have been rewritten and simplified, the substantive content of these sections is not significantly different from that applying previously*”.

12. Section 8.5 of the General Orders 2005 governs annual leave entitlement and makes provision for annual leave in hours rather than calendar days. Section 8.5(1) (at p.152 of RG-1) provides: “*An employee is entitled to annual leave at the following rates:*

*... (b) For full-time Police Officers: (i) Constable: 165 hours, (ii) Sergeant: 187.5 hours, (iii) Assistant/Inspector: 210 hours; (iv) Chief Inspector and above: 232.5 hours*”

(the leave allocated being the “**Leave Allowance**”).

13. The Leave Allowance for each rank of officer has not changed since at least 2005 (and indeed as set out below apparently not since at least 1994) and is now expressed (in identical terms to the General Orders 2005) at Schedule 1 section 5(1) of the Personnel Regulations which provide that:

*“An employee is entitled to annual leave at the following rates: ... (c) for full-time Police Officers: (i) Constable: 165 hours; (ii) Sergeant: 187.5 hours; (iii) Assistant/Inspector: 210 hours; and (iv) Chief Inspector and above: 232.5 hours”.*

14. The Personnel Regulations do not specifically stipulate the formula to be used to calculate the annual leave days from the statutory allotted hours for police officers. However, since the General Orders 2005 until the implementation of the Uniform Shift Policy, the number of days of annual leave entitlement for uniform police officers has (correctly, it is submitted) been calculated by dividing the total number of hours per year by a factor of 7.5. This is in accordance with Schedule 1, Section 3(3)(b) of the Personnel Regulations which provides that “*the standard hours worked per month shall be calculated using the formula 21.75 (the average number of working days in a month) times Y, where Y is the*

*number of normal work hours per day. For (i) employees whose normal hours or work are 37.5 hours per week, Y is 7.5 (37.5 divided by 5)...”*. [emphasis added]

15. This formula produced the following days of entitlement for each rank, which has been the applied since at least 2005:

Constable – 22 days, Sergeant – 25 days, Inspector – 28 days, Chief Inspector – 31 days

**(“Established Policy”)**.

16. The Established Policy was consistent with the clear intention of the legislature, as demonstrated by the fact that all of the hours allocated under the Leave Allowance are only roundly divisible by 7.5 (and no other number). It is notable that this was also consistent with the “30 calendar days” allowance for constables allowed under the General Orders 1994 if a four-week month is assumed with 8 weekend non-working days.

#### The Effect of the Uniform Shift Policy

17. Despite the fact that there has been no change to the Personnel Regulations (or any other governing legislation), under the Uniform Shift Policy leave is now calculated and determined using new “*formula*” pursuant to which the Leave Allowance is divided by 11 (being the number of hours per day shift for 8 Day Cycle Police Officers). This amounts to a substantial reduction to the annual leave entitlement for police officers working an 8 Day Shift Cycle.
18. This new mechanism, leading to the USB Revised Leave Calculation, produces the following days of entitlement per rank:

Constable – 15 days, Sergeant – 17.04 days, Inspector – 19.09 days, Chief Inspector – 21.14 days.

Tellingly, in order to achieve a whole number of days the First Respondent under the Uniform Shift Policy then rounds down the number calculated.

19. The consequence of the new interpretation set out in the Uniform Shift Policy is that since 1 January 2021 the annual leave entitlement of officers has been reduced by the following number of days per year:

Constable – 7 days, Sergeant – 8 days, Inspector – 9 days, Chief Inspector – 9.86 days.

### **Compliance with Pre-action Protocol**

20. On 11 March 2021, in compliance with the Pre-action Protocol for Judicial Review, Practice Direction No. 4 of 2013, the Applicants sent a letter before action (“**Letter Before Action**”) to the Respondents, requesting a substantive response within 14 days thereof. Acknowledgment of Service was received on 12 March 2021. No response has been received from either Respondent.

### **Grounds for relief**

21. Articles 19 and 24 of the Bill of Rights, Freedoms and Responsibilities as set out in Part 1 of Schedule 2 of the Constitution of the Cayman Islands (“**Bill of Rights**”) provide as follows:

*Article 19: “(1) All decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair”.*

*Article 24: “It is unlawful for a public official to make a decision or to act in a way that is incompatible with the Bill of Rights unless the public official is required or authorised to do so by primary legislation, in which case that legislation shall be declared incompatible with the Bill of Rights and the nature of that incompatibility shall be specified”.*

22. Pursuant to Articles 19 and 24 of the Bill of Rights it is unlawful for a public official to make a decision or act in a way that is incompatible with the Bill of Rights. It follows that such decision must be lawful, rational, proportionate and procedurally fair.

23. Article 19 effectively replicates and reinforces the common law position which was set out by the Chief Justice in *Streeter and K Coast Development v Immigration Board and Governor in Council* [1998 CILR 366], “It has long been settled law that a decision tainted by irrationality or illegality is a nullity”. The Chief Justice went on to cite the following passages with respect to “irrationality” and “illegality” respectively:

*“By irrationality I mean what can by now be succinctly referred to as ‘Wednesbury unreasonableness’ .... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could arrive at it”*

*“As for illegality ... An administrative decision is flawed if it is illegal. A decision is illegal if: (1) it contravenes or exceeds the terms of the power which authorises the making of the decision; or (2) It pursues an objective other than that for which the power to make the decision was conferred”.*

24. It is submitted that in implementing the USP Revised Leave Calculation the First Respondent has acted in a manner which is irrational, unlawful and illegal. This is especially the case in circumstances in which the First Respondent is purporting, without the intervention of the legislature to change the leave entitlement of police officers despite the fact that such leave entitlement is mandated by statute and has been unchanged for at least 16 years.

25. In *Council of Civil Service Unions v Minister for Civil Service* [1085] A.C. 374 (“GCHQ”) Lord Diplock identified a further ground of judicial review, being “procedural impropriety” and stated that where a person has a “legitimate expectation of receiving [some] benefit or privilege... the courts will protect his expectation by judicial review as a matter of public law”.

26. For a legitimate expectation to arise the decision or action “must affect [an applicant] ... (b) by depriving him of some benefit or advantage which either (i) he had in the past been

*permitted by the decision-maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational ground for withdrawing it on which he has been given an opportunity to comment...”.*

27. The above passages were cited with approval by the Chief Justice in the Cayman Islands in *Mohanty v Health Practitioners Board* [2001 CILR 459]. Indeed, the Chief Justice went on to approve the words of Lord Fraser (also in GCHQ) that “*legitimate, or reasonable expectation may arise from an express promise given on behalf of a public authority or from the existence of a regular practice which the claimant can reasonably expect to continue*”. While in *Thompson (trading as Peppa’s Production) v Chief Immigration Officer* [2006 CILR Note 10] it was held by Henderson J that “*for a legitimate expectation to be created, there must have been a clear and unambiguous representation on which it was reasonable to rely*”. It is submitted that a policy which has been in place for at least 15 years, in relation to the application of a statutory allowance of leave, amounts to a clear and unambiguous representation on which it was reasonable to rely.

28. While in *R (on the application of Niazi) v Secretary of State for the Home Department* [2008] EWCA Civ 755, the Court of Appeal again reviewed the authorities in relation to this issue and recognised that “*legitimate expectation... may (not must) arise in circumstances where a public decision maker changes, or proposes to change, an existing policy or practice. The doctrine will apply in circumstances where the change or proposed change of policy or practice is held to be unfair or an abuse of power*”.

(a) Unlawful/Irrational Action and Decision

29. It is submitted that the decision and action of the First Respondent to implement the Uniform Shift Policy unilaterally reducing the amount of leave available for police officers is:

- i. unlawful and irrational contrary to Article 19 and 24 of the Bill of Rights;
- ii. unlawful and contrary to Schedule 1 section 5(1) of the Personnel Regulations; and

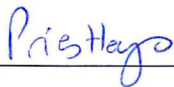
iii. unlawful and contrary to a legitimate expectation of all police officers and the First and Second Applicants.

(b) Procedural Unfairness

30. It is submitted that in changing the application of the Regulations without reference to the legislature in circumstances in which leave for police officers has been determined by the legislature, the First Respondent acted in a manner which is procedurally unfair and amounts to an abuse of power.

Dated the 31 day of March 2021

Filed the 31 day of March 2021



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**PRIESTLEYS**

Attorneys-at-Law for the Applicants