



D COURT OF THE CAYMAN ISLANDS

CIVIL DIVISION

CAUSE NO. G 0253 OF 2025

BETWEEN:

THE KING
(ON THE APPLICATION OF SHARON ROULSTONE,
IN HER CAPACITY AS OMBUDSMAN OF THE CAYMAN ISLANDS)

Applicant

AND:

HER EXCELLENCY THE GOVERNOR OF THE CAYMAN ISLANDS

First Respondent

AND:

FELICITY MITCHELL

Second Respondent

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on the 11th day of December 2025 at 10:00 am on behalf of the Applicant and following the grant by this Court on 1 October 2025 of leave to bring a judicial review in respect of two decisions made by the First Respondent; the first was to commence an investigation on specified Terms of Reference into certain grievances in relation to the Applicant's conduct which had been received from three members of the Applicant's staff (the "Grievance Process Decision"); the second was to commence a disciplinary process against the Applicant (the "Disciplinary Process Decision")(together the "Decisions"). These Decisions, the Terms of Reference, and the conduct of the Grievance and Disciplinary Processes by the Second Respondent are challenged on the grounds that they are unlawful and that the continuing proceedings are vitiated by both illegality and substantive unfairness.

This **NOTICE OF MOTION** is filed by Travers Thorp Alberga, Attorneys-at-law for the Applicant whose address for service is 103 S. Church St, Harbour Place, PO Box 472, KY1-1106, Grand Cayman, Cayman Islands (R0773-001)

AND FURTHER TAKE NOTICE that the Applicant seeks the following Relief against the Respondents, namely:

- (i) An Order for Certiorari that the Decisions be quashed.
- (ii) Declarations pursuant to the Constitution that the Decisions are incompatible with Article 19 of the Bill of Rights.
- (iii) Such further and other relief as this Honourable Court may deem just; and
- (iv) Costs.

AND TAKE NOTICE THAT the grounds of this Notice of Motion are as follows:

Jurisdictional background

1. An Ombudsman has a uniquely important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms.
2. By virtue of their special status enshrined in the Cayman Islands Constitution Order 2009 (the **Constitution**) (and in particular having regard to their role in conducting independent investigations of public bodies), by section 120(6) of the Constitution, the Ombudsman is not to be the subject to the direction or control of any other person or authority. Section 120(4)(d) of the Constitution provides the Governor with a power to remove the Ombudsman from office for misbehaviour, which is to be narrowly construed. S19(1) of the Constitution mandates that all decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.
3. These general principles reflect and implement statements of international law principles concerning the role of Ombudsman, such as the Principles on the Protection and Promotion of the Ombudsman Institution ("the Venice Principles"). Principle 11 of the Venice Principles requires the term "misbehaviour" to be construed narrowly.

This **NOTICE OF MOTION** is filed by Travers Thorp Alberga, Attorneys-at-law for the Applicant whose address for service is 103 S. Church St, Harbour Place, PO Box 472, KY1-1106, Grand Cayman, Cayman Islands (R0773-001)



4. They are also incorporated in Cayman Islands statute as follows:
- (1) Section 6 of the Ombudsman Act (2021 Revision), which provides that the Ombudsman shall not be subject to the direction or control of any other person or authority.
 - (2) Section 3 of the Ombudsman Act (2021 Revision), which provides that the Governor may revoke the Ombudsman's appointment if the Ombudsman "(a) *becomes of unsound mind or becomes permanently unable to perform the functions of Ombudsman by reason of ill health; (b) becomes bankrupt or compounds with or suspends payment to creditors; (c) fails to carry out the functions conferred on the Ombudsman by this Act or a scheduled Act; or (d) brings the office of Ombudsman into disrepute.*"
5. Section 120 of the Constitution provides:
- "(1) Subject to this Constitution, a law enacted by the Legislature may make provision for the office, functions and jurisdiction of a Complaints Commissioner, otherwise called an Ombudsman.*
 - (2) The Complaints Commissioner shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition by instrument under the public seal.*
 - ...
 - (4) The office of the Complaints Commissioner shall become vacant –*
 - ...
 - (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).*
 - (3) Subject to such exceptions as the Governor, acting in his or her discretion, may authorise by directions in writing, the Complaints Commissioner shall not hold any other office of emolument either in the public service or otherwise nor engage in any occupation for reward other than the duties of his or her office.*

(6) *In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority.*” (emphasis added)

6. Section 6 of the Ombudsman Law 2017 (the “**Ombudsman Law**”) reiterates the independence of the Complaints Commissioner / Ombudsman thus:

“Subject to the provisions of the Constitution relating to the powers of the Director of the Public Prosecutions, in the exercise of the functions of the Ombudsman, the Ombudsman shall not be subject to the direction or control of any other person or authority.”

*“Except as otherwise provided in this Law, the Ombudsman shall be subject to the Public Service Management Law (2013 Revision), **and the Ombudsman may adopt such policies and directions by the Deputy Governor as the Ombudsman sees fit to the extent that these do not, in the opinion of the Ombudsman, compromise the Ombudsman’s independence.**”* (emphasis added)

7. The term “functions” defined in section 2 of the Ombudsman Law to include “responsibilities, powers and duties” is to be construed in conjunction with the overarching importance of the independence of the Ombudsman’s Office, which is a feature of the Ombudsman Act (2021 Revision) and more fundamentally in the Constitution. For example, Section 6(2) of the Ombudsman Act (2021 Revision) expressly provides the Complaints Ombudsman with a discretion to accept civil service directions and the power to reject them where they affect the independence of the Office. In addition, the Ombudsman’s control over and submission of her Office’s budget to Parliament is not subject to the mediation of a minister or of the Governor, but by direct submission to the Parliamentary Oversight Committee.

The Ombudsman of the Cayman Islands / the Applicant

8. The Applicant was appointed the Ombudsman of the Cayman Islands in April 2022.
9. The Applicant was and is the first Caymanian to hold the office of Ombudsman.

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10. Since her appointment as the Ombudsman, the Applicant has conducted rigorous investigations of several public bodies including the office of the Governor. So far as the Applicant is aware, public confidence in her has never been questioned.
11. From the first year of her appointment, the Applicant has been the subject of a series of investigations initiated by the First Respondent's predecessor, the first three of which were abandoned and/or determined in favour of the Applicant and the fourth of which is the subject of these proceedings.
12. The decision to instigate the Grievance Process and to investigate the grievances against the Applicant was communicated to the Applicant by email from the First Respondent dated 30 July 2025 and timed at 6.05pm. In the email, the First Respondent confirmed:

"I have now formally appointed Felicity Mitchell, a former senior Ombudsman in the UK, to lead the investigation into the grievances I have received in relation to your conduct."
13. In a response dated 30 September 2025 to the Applicant's letter before action the First Respondent asserted the Second Respondent was appointed to conduct an investigation pursuant to powers vested in the First Respondent by S120(4)(d) and 109(1) of the Cayman Islands Constitution. Such an investigation and in particular the discretions exercised during its course are by their very nature public, constitutional matters which necessitate the naming of the Second Respondent as a party to this judicial review.
14. The following day, Friday, 31 July 2025 at 4.17pm, a Mr Neville, who was said to be working with the Second Respondent, emailed the Applicant a set of purported "Terms of Reference" in accordance with which it was stated the investigation would be conducted along with an incomplete set of the grievances that were to be the subject of the investigation.
15. Although the Terms of Reference were entitled "*Terms of reference for investigation of grievances*", they referred to two distinct stages and procedures of the proposed investigation, the first of which was the "Grievance Stage", for which the procedure was set out at Appendix A, and the second, the "Disciplinary Stage", for which the procedure

was sent out at Appendix B. The applicant will refer to the document for its full terms and effect but, in essence, each stage was said to have various possible outcomes. At the Grievance Stage, these included, for example, the possibility of mediation or a recommendation that the Ombudsman undergo personal development training or take some other action, or that

"The Lead Investigator decides that there is a case to answer for disciplinary action in relation to specific allegations (the disciplinary allegations) and recommends to HE the Governor that Stage 2 of this process should be initiated."

16. The Disciplinary Stage included the following possible outcomes,

"One or more of the disciplinary allegations are upheld or partially upheld and the Lead Investigator recommends to HE the Governor:

- a. *that the Ombudsman should enter into a mediation or conciliation process with the individual or individuals concerned; and/or*
- b. *that the Ombudsman should undergo personal development or training, or should take some other action; or*
- c. *an appropriate sanction, in line with the table set out in Appendix B."*

17. The sanctions set out in Appendix B are as follows

"First written warning. A first warning for misconduct if conduct does not meet acceptable standards. This will be in writing and set out the nature of the misconduct and the change in behaviour required. The warning will also tell you that a final written warning may be considered if there is no sustained satisfactory improvement or change. We will keep a record of the warning, but it will be disregarded for disciplinary purposes after 12 months.

Final written warning. We might give you a final written warning if:

- *the offence is sufficiently serious*
- *there is further misconduct.*

This will confirm the full details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. The written warning will be placed on your Employee File but it will be disregarded for disciplinary purposes after 12 months, as long as you achieve and maintain satisfactory conduct or performance.



Dismissal or action short of dismissal. A decision to dismiss can only be taken by the HE the Governor of the Cayman Islands, if it is decided that the disciplinary allegations that have been upheld bring the office of the Ombudsman into disrepute you may be dismissed with immediate effect.

You will be provided in writing with the:

- *reasons for dismissal*
- *date your employment will end, and*
- *confirmation of all final payments you are owed, including any accrued annual leave which has not been taken.*

If it is decided that the allegations that have been upheld amount to gross misconduct that brings the office of the Ombudsman into disrepute, you may be dismissed with immediate effect. You will be provided in writing with the:

- *notice that you are being dismissed under the terms of your contract,*
- *date your employment will end with immediate effect, and confirmation of all final payments you are owed, including any accrued annual leave which has not been taken.*

If an action short of dismissal (such as a requirement that you undertake leadership development or participate in executive coaching) has been decided on, you will be warned that dismissal could result if there is no satisfactory improvement to address behaviours which, if continuing, would bring the Office of the Ombudsman into disrepute.

Actions in relation to individuals who made the grievances. You may be required to take action, or desist from some action, in relation to the individuals who made the grievances."

18. This document is repetitive and misleading and appears to have been adapted from an existing template, without proper consideration of the constitutional and legal basis for the investigation and the nature of the Applicant's independent constitutional office. Perhaps conscious of the deficiency, Mr Neville in his email of Friday, 31 July 2025 at 4.17pm, further asked the Applicant:

"If you identify anything in the procedures that you believe is contrary to the legislative framework governing your office, please tell us as soon as possible, and we will consider your points."

19. The Applicant responded to the Second Respondent by email on 8 August to express her concerns as to the fairness of the proposed investigation, including, in particular, the fact

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that the Applicant was not provided with sufficient information and/or supporting evidence about the grievances, nor with sufficient time to prepare her response to the grievances or properly to articulate her concerns as to the First Respondent's jurisdiction. It was not the Applicant's responsibility to identify the legal basis for the investigation into her.

20. The Applicant was particularly concerned about the nature and fairness of the process because, in a discussion with the Respondent on about 24 June 2025, the First Respondent had observed that she must be exhausted by successive investigations and suggested that she might step down from her office and accept a payout rather than be investigated again.
21. The Second Respondent replied to the Applicant on 8 August 2025 to the effect that the Applicant should have had sufficient time to prepare her response over the course of two weekends notwithstanding her heavy workload as Ombudsman and refused to allow any further time to respond. This was unfair, unreasonable and unnecessary, particularly in the light of the nature of the specified grievances (see paragraph 26 below and the potential consequences).
22. The Applicant was only provided with the material purporting to support the grievances against her in a series of disjointed emails over the period between 31 July 2025 and 12 August 2025, some reaching her *after* the meeting held with her by the Second Respondent on 12 August 2025. This, too, was unfair and unreasonable and made the process of responding to the grievances harder and more stressful for the Applicant.
23. Despite her reservations, the Applicant met the Second Respondent to discuss the grievances on 12 August 2025. The Second Respondent opened the meeting by saying:

"I'm intending to try and keep it as informal as we can. It's part of the grievance process. It's not, you know... it shouldn't be a formal frightening process. Grievances are supposed to be about trying to get to the bottom of what's gone wrong and try to help people put things right. So, please take it in that..."



24. The Second Respondent reassured the Applicant that she was looking at “*grievances and not disciplinary*” adding that “*there’s a big gap between what I’m looking at now and the Governor’s power to dismiss*”. Throughout the interview, the Second Respondent referred to the process as concerned with “*HR type issues*”.
25. At no stage during this interview or otherwise did the investigator inform the Applicant that she was being investigated for misbehaviour that might warrant her removal under section 120 of the Constitution.
26. On 18 August 2025 the Applicant provided a detailed response to the grievances and enclosed a substantial volume of supporting material amounting to over 900 pages.
27. On 1 September 2025, barely 14 days following the Applicant’s written response, the Second Respondent provided the Applicant with a report in which she upheld a number of the grievances as follows:
 - (1) A complaint that the Applicant raised her voice and struck her hand on a table in meetings which took place on 20 and 27 May 2025.
 - (2) A complaint that the Applicant did not provide proper feedback on a manager’s performance.
 - (3) A complaint that insufficient training or mentoring was given to a manager.
 - (4) A complaint that a manager was given inconsistent messages regarding his competence.
 - (5) A complaint about the manner in which the Applicant handled a request from an employee that she be allowed to work remotely from the United States.
 - (6) A complaint that the same employee was made to feel a “scapegoat”.

- (7) A complaint about the Applicant's rejection of an employee's request for additional sick leave and to work from home.
 - (8) A complaint about a threat made to sell an ergonomic chair used by the same employee.
 - (9) A complaint about the issuing of a formal warning to the same employee for absenteeism and insubordination.
 - (10) A complaint that there was no proper grievance or disciplinary process in place for Ombudsman staff.
28. On the basis of these findings, the report recommended that the purported disciplinary process sent out in Appendix B should be initiated. The First Respondent's decision to initiate the Disciplinary Process was communicated to the Applicant in a three-line email dated 23 September 2025, timed at 5:54 pm.
29. No opportunity was afforded to the Applicant to make representations *before* the decision, which, given the implications and consequences, natural justice required. The disciplinary meeting was scheduled to take place at 10am on Tuesday 30 September. It is notable that the disciplinary process was intended to be conducted by the same person that conducted the investigation, namely the Second Respondent. This was highly irregular and inappropriate and breached the principle of impartiality and unfairness. It was also in contravention of the ACAS guidance on investigations which recommends that the person conducting the investigation should be different from the person who makes the disciplinary decision, wherever possible.
30. Further, the findings of the Investigation are not supported by the evidence, ignore material factors and are altogether unsound and unreliable.
31. By an email dated 26 September 2025, timed 4.29pm (barely 45 minutes after Travers Thorp Alberga's letter indicating they had been instructed by the Applicant), the Second Respondent denied that the Applicant was entitled to legal representation at that meeting

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and refused a request for a short postponement of the meeting for the Applicant to receive legal advice about the legality and fairness of the process to date. The Applicant will rely on that email as further evidence of the unfairness and lack of impartiality of the process.

32. The Applicant has received no further information about the nature of the process or the legal basis for it, or about the allegations she faces. In particular, she was not given notice by the First Respondent of the *reasons* for deciding that a *disciplinary* process should be initiated other than that, by the three-line email dated 23 September 2025, timed at 5:54 pm, the First Respondent has decided to “adopt the recommendation” of the Second Respondent.
33. For example, the Applicant has not been informed how the findings could amount to misbehaviour of a type that might reasonably justify her removal from office, which, contrary to the Terms of Reference, is the only mandatory sanction available to the First Respondent. Instead, it appears the so-called “Disciplinary Process” set out in Appendix B is misleadingly being portrayed by the First Respondent and the Second Respondent to the Applicant as essentially an internal “HR issue”, from which various disciplinary outcomes *might* in theory result. However, it is not open to the First Respondent to impose such conditions on the Ombudsman.
34. In the absence of adequate, or any, reasons for doing so, and in the light of the flawed Terms of Reference, the Court should conclude that the First Respondent, in deciding to adopt the Second Respondent’s recommendation, had simply not accurately addressed her mind to the correct legal conditions for her decision.
35. The office of Ombudsman is an independent public and constitutional office and not subject to the ordinary disciplinary processes of the civil service under the Public Service Management Act (2018 Revision) and Personnel Regulations (2025 Revision).
36. Section 120 (6) of the Cayman Islands Constitution provides that in the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority. Section 6 of the Ombudsman Act (2021 Revision) restates and reinforces that independence.

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37. The Terms of Reference purport to subject the Ombudsman to disciplinary processes, including the possibility of various mandatory disciplinary sanctions and other actions, which there is no power for any other person or authority either to recommend or to impose.
38. The only circumstances in which the Ombudsman could be subject to inquiry or sanction for the performance of her office is for misbehaviour of a type that might justify the removal by the Governor of a person appointed to that independent constitutional office pursuant to section 120(4) of the Constitution. However, the Applicant has been notified of no such charge, which would imply fundamentally different proceedings from those on which the First Respondent has apparently decided to embark, (including legal representation).
39. In connection with the Disciplinary Process, the Applicant is entitled to know clearly from the outset the legal basis and nature of the process to which it is proposed to subject her, and to be given full particulars of the behaviour, which it is said amounts to *misbehaviour* capable of warranting her removal under the Constitution.
40. In connection with the Grievance Process, she was entitled to know, was it to be a Grievance Process leading to multiple possible outcomes, as it was advertised and stated to be, or was it in reality an *ad hoc* process put in place purely to enable the Governor to consider her discretion to remove the Respondent under section 120 of the constitution? There was a fundamental lack of clarity as to the legal basis on which those proceedings were launched.
41. This lack of legal clarity matters for three critical reasons. First, the Governor lacks power to institute the type of mandatory processes to which the Applicant has been formally notified she is subject. The only power she possesses is to consider the Applicant's removal under section 120 of the Constitution. Secondly, the process is fundamentally unfair.
42. None of the various options set out in the terms of reference can be imposed upon the Ombudsman as a condition of her employment. Yet, at no stage has she been informed



that she is accused of misbehaviour of a type that might open her to a charge of misbehaviour sufficient to warrant removal.

43. Secondly, it is inaccurate and misleading, and contrary to natural justice, to notify the Applicant that she is participating in Grievance and now Disciplinary Processes that may have various possible mandatory outcomes, if she is not, and if the reality is that its real purpose is to consider whether she should be removed on the grounds of the type of misbehaviour necessary to remove a person from a constitutional office.
44. Thirdly, the nature of the process makes a significant difference to the manner in which the Applicant may have chosen up to now, and may choose, to respond to the allegations. Therefore, the processes to date have been and continue to be vitiated by fundamental unfairness, which it appears there is no intention on the part of those responsible to correct.
45. In summary, the Applicant will rely on the following features of the process as being unlawful, irrational, disproportionate and procedurally unfair:
 - (1) The history of repeated investigations which were then abandoned.
 - (2) The fact that the First Respondent suggested the Applicant must be unhappy being investigated at a meeting which took place on 24 June 2025 and might wish to step down. It is a reasonably available inference from that exchange that the First Respondent was thereby inviting the Applicant to step down.
 - (3) The rushed, untransparent and private nature of the processes.
 - (4) The misleading lack of clarity concerning their legal basis and nature.
 - (5) The purported imposition of the Grievance and Disciplinary Processes on the Applicant without legal authority.
 - (6) The failure to accord the Applicant the basic rights to make informed representations, based on a clear understanding of the case against her, which

natural justice would require in the circumstances, prior to the decision to initiate the Disciplinary Process.

- (7) The failure to give adequate or any reasons for the Decisions.
- (8) The continuing failure to formulate and notify the Applicant of the case made against her on which the decision to remove her from office might be taken.
- (9) The refusal to permit the Applicant to challenge the findings on which the decision to initiate the Disciplinary Process was taken, many of which are susceptible to reasonable objection.
- (10) The unreasonable refusal to grant the Applicant's reasonable requests for further time to prepare for the Disciplinary Meeting (which could lead to her removal) by a 7 day extension to enable legal advice to be taken following the instruction of counsel.
- (11) The nature of the allegations, which are: a) confined to internal office complaints by three members of staff concerning the Applicant's management of them and b) do not relate to or impinge upon the competence, integrity or quality of the exercise of her primary constitutional investigative functions in serving the public and c) do not ascend to the level of grave seriousness required to be "misbehaviour" warranting removal under the Constitution.

DATED the 8th day of October 2025



TRAVERS THORP ALBERGA
Attorneys-at-Law for the Applicant



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2025

BETWEEN:

THE KING
(ON THE APPLICATION OF SHARON ROULSTONE,
IN HER CAPACITY AS OMBUDSMAN OF THE CAYMAN ISLANDS)

Applicant

AND:

HER EXCELLENCY THE GOVERNOR OF THE CAYMAN ISLANDS

First Respondent

AND:

FELICITY MITCHELL

Second Respondent

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

To the Clerk of the Court, Law Courts, George Town, Grand Cayman	
Name, address and description of applicant(s)	Sharon Roulstone C/O Travers Thorp Alberga 103 South Church Street, Harbour Place PO Box 472 Grand Cayman, KY1-1106 Cayman Islands
Judgment, order, decision or other proceeding in respect of which relief is sought	1. A decision made by the First Respondent on or around 30 July 2025 to commence an investigation on specified Terms of Reference into certain grievances in relation to the Applicant's conduct which had been received from three members of the Applicant's staff.

1

This **APPLICATION** is filed by Travers Thorp Alberga, Attorneys-at-law for the Applicant whose address for service is 103 S. Church St, Harbour Place, PO Box 472, KY1-1106, Grand Cayman, Cayman Islands (R0773-001)

	2. A decision made on or around 1 September 2025 by the First Respondent to commence a disciplinary process against the Applicant. together the "Decisions"
Relief Sought	1. Leave pursuant to Order 53 Rule 3(1) of the Grand Court Rules to bring these proceedings by way of judicial review. 2. A direction pursuant to Order 53 Rule 3(10)(a) that the grant of leave to bring these proceedings by way of judicial review shall operate as a stay of the Decisions and/or the disciplinary process until further order of this Court, alternatively an injunction prior to the grant of leave restraining the Respondents from taking any further steps in relation to the Decisions and/or the disciplinary process until further order. 3. An Order for Certiorari that the Decisions be quashed. 4. Declarations pursuant to the Constitution that the Decisions are incompatible with Article 19 of the Bill of Rights. 5. Such further and other relief as this Honourable Court may deem just; and 6. Costs.
Grounds on which relief is sought	See attached
Name and address of Applicant's attorney	Travers Thorp Alberga Attorneys-at-Law Harbour Place, 103 South Church Street PO BOX 472 Grand Cayman KY1-1106 Cayman Islands (Ref: B1387-001)



TAKE NOTICE that the Applicant seeks the following Relief against the Respondent, namely:

1. Leave pursuant to Order 53 Rule 3(1) of the Grand Court Rules to bring these proceedings by way of judicial review.
2. A direction pursuant to Order 53 Rule 3(10)(a) that the grant of leave to bring these proceedings by way of judicial review shall operate as a stay of the Decisions and/or the disciplinary process until further order of this Court, alternatively an injunction prior to the grant of leave restraining the Respondents from taking any further steps in relation to the Decisions and/or the disciplinary process until further order.
3. An Order for Certiorari that the Decisions be quashed.
4. Declarations pursuant to the Constitution that the Decisions are incompatible with Article 19 of the Bill of Rights.
5. Such further and other relief as this Honourable Court may deem just; and
6. Costs.



AND TAKE NOTICE THAT the grounds of the Application are as follows.

INTRODUCTION

This application concerns two decisions made by the First Respondent; the first was to commence an investigation on specified Terms of Reference into certain grievances in relation to the Applicant's conduct which had been received from three members of the Applicant's staff (the Grievance Process decision); the second was to commence a disciplinary process against the Applicant (the Disciplinary Process decision). These decisions, the Terms of Reference, and the conduct of the Grievance and Disciplinary Processes by the Second Respondent are challenged on the grounds that they are unlawful and that the continuing proceedings are vitiated by both illegality and substantive unfairness.

Jurisdictional background

1. An Ombudsman has a uniquely important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms.
2. By virtue of their special status enshrined in the Cayman Islands Constitution Order 2009 (the **Constitution**) (and in particular having regard to their role in conducting independent investigations of public bodies), by section 120(6) of the Constitution, the Ombudsman is not to be the subject to the direction or control of any other person or authority. Section 120(4)(d) of the Constitution provides the Governor with a power to remove the Ombudsman from office for misbehaviour, which is to be narrowly construed. S19(1) of the Constitution mandates that all decisions and acts of public officials must be lawful, rational, proportionate and procedurally fair.
3. These general principles reflect and implement statements of international law principles concerning the role of Ombudsman, such as the Principles on the Protection and



Promotion of the Ombudsman Institution ("the Venice Principles"). Principle 11 of the Venice Principles requires the term "misbehaviour" to be construed narrowly.

4. They are also incorporated in Cayman Islands statute as follows:

- (1) Sections 6 of the Ombudsman Act (2021 Revision), which provides that the Ombudsman shall not be subject to the direction or control of any other person or authority.
- (2) Section 3 of the Ombudsman Act (2021 Revision), which provides that the Governor may revoke the Ombudsman's appointment if the Ombudsman "(a) becomes of unsound mind or becomes permanently unable to perform the functions of Ombudsman by reason of ill health; (b) becomes bankrupt or compounds with or suspends payment to creditors; (c) fails to carry out the functions conferred on the Ombudsman by this Act or a scheduled Act; or (d) brings the office of Ombudsman into disrepute."

5. Section 120 of the Constitution provides:

- "(1) Subject to this Constitution, a law enacted by the Legislature may make provision for the office, functions and jurisdiction of a Complaints Commissioner, otherwise called an Ombudsman.
- (2) The Complaints Commissioner shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition by instrument under the public seal.
- ...
- (4) The office of the Complaints Commissioner shall become vacant –
- ...
- (d) if the Governor, acting in his or her discretion, directs that he or she shall be removed from office for inability to discharge the functions of the office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour, or for contravention of subsection (5).
- (3) Subject to such exceptions as the Governor, acting in his or her discretion, may authorise by directions in writing, the Complaints Commissioner shall not hold any other office of emolument either



in the public service or otherwise nor engage in any occupation for reward other than the duties of his or her office.

- (6) ***In the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority. (emphasis added)***

6. Section 6 of the Ombudsman Law 2017 (the **Ombudsman Law**) reiterates the independence of the Complaints Commissioner / Ombudsman thus:

"Subject to the provisions of the Constitution relating to the powers of the Director of the Public Prosecutions, in the exercise of the functions of the Ombudsman, the Ombudsman shall not be subject to the direction or control of any other person or authority."

*"Except as otherwise provided in this Law, the Ombudsman shall be subject to the Public Service Management Law (2013 Revision), **and the Ombudsman may adopt such policies and directions by the Deputy Governor as the Ombudsman sees fit to the extent that these do not, in the opinion of the Ombudsman, compromise the Ombudsman's independence.**" (emphasis added)*

7. The term "functions" defined in section 2 of the Ombudsman Law to include "responsibilities, powers and duties" is to be construed in conjunction with the overarching importance of the independence of the Ombudsman's Office, which is a feature of the Ombudsman Act (2021 Revision) and more fundamentally in the Constitution. For example, Section 6(2) of the Ombudsman Act (2021 Revision) expressly provides the Complaints Ombudsman with a discretion to accept civil service directions and the power to reject them where they affect the independence of the Office. In addition, the Ombudsman's control over and submission of her Office's budget to Parliament is not subject to the mediation of a minister or of the Governor, but by direct submission to the Parliamentary Oversight Committee.

The Ombudsman of the Cayman Islands / the Applicant

8. The Applicant was appointed the Ombudsman of the Cayman Islands in April 2022.



9. The Applicant was and is the first Caymanian to hold the office of Ombudsman.
10. Since her appointment as the Ombudsman, the Applicant has conducted rigorous investigations of several public bodies including the office of the Governor. So far as the Applicant is aware, public confidence in her has never been questioned.
11. From the first year of her appointment, the Applicant has been the subject of a series of investigations initiated by the First Respondent's predecessor, the first three of which were abandoned and/or determined in favour of the Applicant and the fourth of which is the subject of these proceedings.
12. The decision to instigate the Grievance Process and to investigate the grievances against the Applicant was communicated to the Applicant by email from the First Respondent dated 30 July 2025 and timed at 6.05pm. In the email, the First Respondent confirmed:

"I have now formally appointed Felicity Mitchell, a former senior Ombudsman in the UK, to lead the investigation into the grievances I have received in relation to your conduct."

13. The following day, Friday, 31 July 2025 at 4.17pm, a Mr Neville, who was said to be working with the investigator, the Second Respondent, emailed the Applicant a set of purported "Terms of Reference" in accordance with which it was stated the investigation would be conducted along with an incomplete set of the grievances that were to be the subject of the investigation.
14. Although the Terms of Reference were entitled "*Terms of reference for investigation of grievances*", they referred to two distinct stages and procedures of the proposed investigation, the first of which was the "Grievance Stage", for which the procedure was set out at Appendix A, and the second, the "Disciplinary Stage", for which the procedure was sent out at Appendix B. The applicant will refer to the document for its full terms and effect but, in essence, each stage was said to have various possible outcomes. At the Grievance Stage, these included, for example, the possibility of mediation or a recommendation that the Ombudsman undergo personal development training or take some other action, or that:



"The Lead Investigator decides that there is a case to answer for disciplinary action in relation to specific allegations (the disciplinary allegations) and recommends to HE the Governor that Stage 2 of this process should be initiated."

15. The Disciplinary Stage included the following possible outcomes

"One or more of the disciplinary allegations are upheld or partially upheld and the Lead Investigator recommends to HE the Governor:

- a. that the Ombudsman should enter into a mediation or conciliation process with the individual or individuals concerned; and/or*
- b. that the Ombudsman should undergo personal development or training, or should take some other action; or*
- c. an appropriate sanction, in line with the table set out in Appendix B."*

16. The sanctions set out in Appendix B are as follows

"First written warning. A first warning for misconduct if conduct does not meet acceptable standards. This will be in writing and set out the nature of the misconduct and the change in behaviour required. The warning will also tell you that a final written warning may be considered if there is no sustained satisfactory improvement or change. We will keep a record of the warning, but it will be disregarded for disciplinary purposes after 12 months.

Final written warning. We might give you a final written warning if:

- the offence is sufficiently serious*



- *there is further misconduct*

This will confirm the full details of the complaint, the improvement required and the timescale. It will also warn that failure to improve may lead to dismissal (or some other action short of dismissal) and will refer to the right of appeal. The written warning will be placed on your Employee File but it will be disregarded for disciplinary purposes after 12 months, as long as you achieve and maintain satisfactory conduct or performance.

Dismissal or action short of dismissal. A decision to dismiss can only be taken by the HE the Governor of the Cayman Islands, if it is decided that the disciplinary allegations that have been upheld bring the office of the Ombudsman into disrepute you may be dismissed with immediate effect.

You will be provided in writing with the:

- *reasons for dismissal*
- *date your employment will end, and*
- *confirmation of all final payments you are owed, including any accrued annual leave which has not been taken.*

If it is decided that the allegations that have been upheld amount to gross misconduct that brings the office of the Ombudsman into disrepute, you may be dismissed with immediate effect. You will be provided in writing with the:

- *notice that you are being dismissed under the terms of your contract,*
- *date your employment will end with immediate effect, and confirmation of all final payments you are owed, including any accrued annual leave which has not been taken.*

If an action short of dismissal (such as a requirement that you undertake leadership development or participate in executive coaching) has been decided on, you will be warned that dismissal could result if there is no satisfactory improvement to address behaviours which, if continuing, would bring the Office of the Ombudsman into disrepute.

Actions in relation to individuals who made the grievances. You may be required to take action, or desist from some action, in relation to the individuals who made the grievances."

17. This document is repetitive and misleading and appears to have been adapted from an existing template, without proper consideration of the constitutional and legal basis for the investigation and the nature of the Applicant's independent constitutional office. Perhaps, conscious of the deficiency, Mr Neville in his email of Friday, 31 July 2025 at 4.17pm, further asked the Applicant:

"If you identify anything in the procedures that you believe is contrary to the legislative framework governing your office, please tell us as soon as possible, and we will consider your points."

18. The Applicant responded to the Second Respondent by email on 8 August to express her concerns as to the fairness of the proposed investigation, including, in particular, the fact that the Applicant was not provided with sufficient information and/or supporting evidence about the grievances, nor with sufficient time to prepare her response to the grievances or properly to articulate her concerns as to the First Respondent's jurisdiction. It was not the Applicant's responsibility to identify the legal basis for the investigation into her.
19. The Applicant was particularly concerned about the nature and fairness of the process because, in a discussion with the Respondent on about 24 June 2025, the First Respondent had observed that she must be exhausted by successive investigations and suggested that she might step down from her office and accept a payout rather than be investigated again.



20. The Second Respondent replied to the Applicant on 8 August 2025 to the effect that the Applicant should have had sufficient time to prepare her response over the course of two weekends notwithstanding her heavy workload as Ombudsman and refused to allow any further time to respond. This was unfair, unreasonable and unnecessary, particularly in the light of the nature of the specified grievances (see paragraph 26 below and the potential consequences).
21. The Applicant was only provided with the material purporting to support the grievances against her in a series of disjointed emails over the period between 31 July 2025 and 12 August 2025, some reaching her *after* the meeting held with her by the Second Respondent on 12 August 2025. This, too, was unfair and unreasonable and made the process of responding to the grievances harder and more stressful for the Applicant.
22. Despite her reservations, the Applicant met the Second Respondent to discuss the grievances on 12 August 2025. The Second Respondent opened the meeting by saying:

"I'm intending to try and keep it as informal as we can. It's part of the grievance process. It's not, you know... it shouldn't be a formal frightening process. Grievances are supposed to be about trying to get to the bottom of what's gone wrong and try to help people put things right. So, please take it in that..."

23. The Second Respondent reassured the Applicant that she was looking at "*grievances and not disciplinary*" adding that "*there's a big gap between what I'm looking at now and the Governor's power to dismiss*". Throughout the interview, the Second Respondent referred to the process as concerned with "*HR type issues*".
24. At no stage during this interview or otherwise did the investigator inform the Applicant that she was being investigated for misbehaviour that might warrant her removal under section 120 of the Constitution.
25. On 18 August 2025 the Applicant provided a detailed response to the grievances and enclosed a substantial volume of supporting material amounting to over 900 pages.



26. On 1 September 2025, barely 14 days following the Applicant's written response, the Second Respondent provided the Applicant with a report in which she upheld a number of the grievances as follows:

- (1) [AS4/AS5] a complaint that the Applicant raised her voice and struck her hand on a table in meetings which took place on 20 and 27 May 2025.
- (2) [AS6] A complaint that the Applicant did not provide proper feedback on a manager's performance.
- (3) [AS6] A complaint that insufficient training or mentoring was given to a manager.
- (4) [AS6] A complaint that a manager was given inconsistent messages regarding his competence.
- (5) [AW1] A complaint] about the manner in which the Applicant handled a request from an employee that she be allowed to work remotely from the United States.
- (6) [AW2] A complaint that the same employee was made to feel a "scapegoat".
- (7) [AP2] A complaint about the Applicant 's rejection of an employee's request for additional sick leave and to work from home.
- (8) [AP3] A complaint about a threat made to sell an ergonomic chair used by the same employee.
- (9) [AP4] A complaint about the issuing of a formal warning to the same employee for absenteeism and insubordination.
- (10) [AP6] A complaint that there was no proper grievance or disciplinary process in place for Ombudsman staff.

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27. On the basis of these findings, the report recommended that the purported disciplinary process sent out in Appendix B should be initiated. The First Respondent's decision to initiate the Disciplinary Process was communicated to the Applicant in a three-line email dated 3 September 2025, timed at 5:54 pm.
28. No opportunity was afforded to the Applicant to make representations *before* the decision, which, given the implications and consequences, natural justice required. The disciplinary meeting is scheduled to take place at 10am on Tuesday 30 September. It is notable that the disciplinary process is intended to be conducted by the same person that conducted the investigation, namely the Second Respondent. This is highly irregular and inappropriate and breaches the principle of impartiality and unfairness. It is also in contravention of the ACAS guidance on investigations which recommends that the person conducting the investigation should be different from the person who makes the disciplinary decision, where possible
29. Further, the findings of the Investigation are not supported by the evidence, ignore material factors and are altogether unsound and unreliable.
30. By an email dated 26 September 2025, timed 4.29pm (barely 45 minutes after Travers Thorp Alberga's letter indicating they had been instructed by the Applicant), the Second Respondent denied the Applicant was entitled to legal representation at that meeting and refused a request for a short postponement of the meeting for the Applicant to receive legal advice about the legality and fairness of the process to date. The Applicant will rely on that email as further evidence of the unfairness and lack of impartiality of the process.
31. The Applicant has received no further information about the nature of the process or the legal basis for it, or about the allegations she faces. In particular, she was not given notice by the First Respondent of the *reasons* for deciding that a *disciplinary* process should be initiated other than that, by the three-line email dated 3 September 2025, timed at 5:54 pm, the First Respondent has decided to "adopt the recommendation" of the Second Respondent.



32. For example, she has not been informed how the findings could amount to misbehaviour of a type that might reasonably justify her removal from office, which, contrary to the Terms of Reference, is the only mandatory sanction available to the First Respondent. Instead, it appears the so-called "Disciplinary Process" set out in Appendix B is misleadingly being portrayed by the First Respondent and the Second Respondent to the Applicant as essentially an internal "HR issue", from which various disciplinary outcomes *might* in theory result. However, it is not open to the First Respondent to impose such conditions on the Ombudsman.
33. In the absence of adequate, or any, reasons for doing so, and in the light of the flawed Terms of Reference, the Court should conclude that the First Respondent, in deciding to adopt the Second Respondent's recommendation, had simply not accurately addressed her mind to the correct legal conditions for her decision.
34. The office of Ombudsman is an independent public and constitutional office and not subject to the ordinary disciplinary processes of the civil service under the Public Service Management Act (2018 Revision) and Personnel Regulations (2025 Revision).
35. Section 120 (6) of the Cayman Islands Constitution provides that in the exercise of his or her functions, the Complaints Commissioner shall not be subject to the direction or control of any other person or authority. Section 6 of the Ombudsman Act (2021 Revision) restates and reinforces that independence.
36. The Terms of Reference purport to subject the Ombudsman to disciplinary processes, including the possibility of various mandatory disciplinary sanctions and other actions, which there is no power for any other person or authority either to recommend or to impose.
37. The only circumstances in which the Ombudsman could be subject to inquiry or sanction for the performance of her office is for misbehaviour of a type that might justify the removal by the Governor of a person appointed to that independent constitutional office pursuant to section 120(4) of the Constitution. However, she has been notified of no such charge,



which would imply fundamentally different proceedings from those on which the First Respondent has apparently decided to embark, (including legal representation).

38. In connection with the Disciplinary Process, the Applicant is entitled to know clearly from the outset the legal basis and nature of the process to which it is proposed to subject her, and to be given full particulars of the behaviour, which it is said amounts to *misbehaviour* capable of warranting her removal under the Constitution.
39. In connection with the Grievance Process, she was entitled to know, was it to be a Grievance Process leading to multiple possible outcomes, as it was advertised and stated to be, or was it in reality an *ad hoc* process put in place purely to enable the Governor to consider her discretion to remove the Respondent under section 120 of the constitution? There was a fundamental lack of clarity as to the legal basis on which those proceedings were launched.
40. This lack of legal clarity matters for three critical reasons. First, the Governor lacks power to institute the type of mandatory processes to which the Applicant has been formally notified she is subject. The only power she possesses is to consider the Applicant's removal under section 120 of the Constitution. Secondly, the process is fundamentally unfair.
41. None of the various options set out in the terms of reference can be imposed upon the Ombudsman as a condition of her employment. Yet, at no stage has she been informed that she is accused of misbehaviour of a type that might open her to a charge of misbehaviour sufficient to warrant removal.
42. It is inaccurate and misleading, and contrary to natural justice, to notify the Applicant that she is participating in Grievance and now Disciplinary Processes that may have various possible mandatory outcomes, if she is not, and if the reality is that its real purpose is to consider whether she should be removed on the grounds of the type of misbehaviour necessary to remove a person from a constitutional office.



43. Thirdly, the nature of the process makes a significant difference to the manner in which the Applicant may have chosen up to now, and may choose, to respond to the allegations. Therefore, the processes to date have been and continue to be vitiated by fundamental unfairness, which it appears there is no intention on the part of those responsible to correct.
44. By an email dated 26 September 2025 and timed 4.29pm, the Second Respondent has declined the Applicant's request to postpone by 7 days the disciplinary meeting to enable Attorneys to go on the record and for the Applicant to be assisted by legal advice and representation. A pre-action protocol letter has been sent to the First Respondent and the Second Respondent at 12noon on Monday 29 September 2025, which requests an undertaking that no further steps should be taken in the disciplinary process pending this application to the Court to which, as yet, no response has been received. Therefore, the Court's urgent intervention by means of interim relief is required. On *American Cyanamid* principles, there is a serious issue to be tried as to the legality and fairness of the proceedings, and the balance of convenience favours a short stay until the issue can be resolved. It cannot be appropriate that potentially unfair proceedings should continue and further prejudice the Applicant while little or no prejudice to the public interest could be occasioned by a short delay.
45. For these reasons the Applicant seeks:
- (1) Leave pursuant to Order 53 Rule 3(1) of the Grand Court Rules to bring these proceedings by way of judicial review.
 - (2) A direction pursuant to Order 53 Rule 3(10)(a) that the grant of leave to bring these proceedings by way of judicial review shall operate as a stay of the Decisions and/or the disciplinary process until further order of this Court, alternatively an injunction prior to the grant of leave restraining the Respondents from taking any further steps in relation to the Decisions and/or the disciplinary process until further order.
 - (3) An Order for Certiorari that the Decisions be quashed.



- (4) Declarations pursuant to the Constitution that the Decisions are incompatible with Article 19 of the Bill of Rights.
- (5) Such further and other relief as this Honourable Court may deem just; and
- (6) Costs.

DATED the 30th day of September 2025

TRAVERS THORP ALBERGA
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