



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. OF 2026

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

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 Harbour Place George Town Grand Cayman Cayman Islands KY1-1106

Judgment, order, decision or other proceeding in respect of which relief is sought	1. The Respondent's decision to enforce part of Clause 3 of the Applicant's Employment Agreement which purports to terminate the Applicant's appointment as Ombudsman when she reaches "<i>normal retirement age</i>" on 10 July 2026 (the "Retirement Condition").
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 any enforcement of the Retirement Condition until further order of this Court, alternatively an injunction prior to the grant of leave restraining the Respondent from acting upon or giving effect to the Retirement Condition until further order. 3. An expedited hearing following the grant of leave, or if needs be a rolled-up hearing with leave and the substantive merits to be determined on the same occasion. 4. A Declaration that the Retirement Condition is unlawful, <i>ultra vires</i> the Ombudsman Act 2021, and of no legal effect. 5. A Declaration that the unlawful Retirement Condition is severable from the remainder of Clause 3 of the Ombudsman's contract, which remains valid and effective for the remainder of her statutory tenure of seven years. 6. Such further or other relief as this Honourable Court may deem just; and 7. Costs.
Grounds on which relief is sought	See below
Name and address of Applicant's attorney	Travers Thorp Alberga Harbour Place, 103 South Church Street PO Box 472 Grand Cayman, KY1-1106 Cayman Islands

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 any enforcement of the Retirement Condition until further order of this Court, alternatively an injunction prior to the grant of leave restraining the Respondent from acting upon or giving effect to the Retirement Condition until further order.
3. An expedited hearing following the grant of leave, or if needs be a rolled-up hearing with leave and the substantive merits to be determined on the same occasion.
4. A Declaration that the Retirement Condition is unlawful, *ultra vires* the Ombudsman Act 2021, and of no legal effect.
5. A Declaration that the unlawful Retirement Condition is severable from the remainder of Clause 3 of the Ombudsman's contract, which remains valid and effective for the remainder of her statutory tenure of seven years.
6. Such further or other relief as this Honourable Court may deem just; and
7. Costs.

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

Introduction

1. The Ombudsman must be appointed for the seven-year term of office stipulated by section 3(2) of the Ombudsman Act (2021 Revision). This application concerns Clause 3 of the Ombudsman's Employment Agreement by which her appointment began on 4th April 2022

and is stated to continue until she reaches normal retirement age under the Public Service Pensions Law, *or* for a duration of seven years, whichever is sooner. The Ombudsman is a constitutional office-holder governed by a distinct legislative scheme, which requires her to be appointed for a fixed term of seven years, and she cannot as a matter of law be subjected to the “*normal retirement age*”, thus abbreviating her term, in the same manner as a civil servant. Normal retirement age for a civil servant is currently 65. The Ombudsman will attain the age of 65 on 10th July 2026, which is two years and nine months before the end of her fixed seven-year term of office.

2. The challenge is to that part of Clause 3 of the Employment Agreement purporting to impose the condition that the Ombudsman’s “*employment*” continues until she reaches “*normal retirement age*” (the retirement condition). The retirement condition is vitiated by illegality and any attempt to enforce it would likewise be illegal. It is severable from the remainder of the Clause.
3. The Applicant reasonably believes that the Respondent proposes to act upon and give effect to the retirement condition so as to compel the Applicant to retire on 10th July 2026. On 14th January 2026 the Applicant’s attorneys wrote to the Respondent seeking written confirmation that the Respondent would not take any steps to bring the Applicant’s tenure to an end before the expiry of her statutory term on 4th April 2029 on the basis of her age. No such confirmation was received from the Respondent, either by 28th January 2026 or on any subsequent date. The Applicant has also noted that her accrued leave has now been pro-rated for the year to 10th July 2026 rather than for the full leave year.

Pre-emptive proceedings and urgency: legal framework

4. Injunctions may be used to stop a public body from acting unlawfully by exceeding or abusing its statutory, prerogative or other public law powers, or by acting in breach of statutory or common law procedural requirements. The courts have granted injunctions ordering a public body not to implement proposed changes which were unlawful, and to restrain a public body from taking action to implement an unlawful decision. See **Lewis on Judicial Remedies in Public Law, 7th edition** at paragraphs 8-006 and 8-014, and

the cases cited therein. These principles extend to relief against officers of the Crown. See also the discussion at paras 18-013 to 18-020 of **De Smith's Judicial Review, 9th edition** as to the use of interim injunctions and stays in a public law context. See in particular at paragraph 18-020 where it is said that *"Where a final decision has been made but not yet implemented, a stay will prevent implementation of the decision..."*

5. See also ***R (Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government*** [2008] 3 All ER 548, where Carnwath LJ said at para 33:

"Judicial review proceedings may come after the substantive event, with a view to having it set aside or 'quashed'; or in advance, when it is threatened or in preparation, with a view to having it stayed or 'prohibited'." (emphasis added)

6. There is urgency, and a need for an interim injunction or stay, on the present facts. As set out above, the Respondent is already taking steps to give effect to the unlawful retirement condition so as to compel the Applicant to retire when she reaches the age of 65 on 10th July 2026. The Court should give a direction for an expedited hearing following the grant of leave or should order a rolled-up hearing with leave and the substantive merits to be determined on the same occasion.

Legislative framework

The Constitution

7. The Office of Ombudsman is an independent constitutional office. Section 120 of the Constitution of the Cayman Islands provides as follows,

"Complaints Commissioner

120.— (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.

(3) No person shall be qualified to be appointed as Complaints Commissioner if he or she is or has been within the preceding three years—

(a) an elected member of the Legislative Assembly; or

(b) the holder of any office in any political party.

(4) The office of the Complaints Commissioner shall become vacant—

(a) at the expiration of the period specified in the instrument by which he or she was appointed;

(b) if he or she resigns office by writing under his or her hand addressed to the Governor;

(c) if he or she becomes an elected member of the Legislative Assembly or the holder of any office in any political party; or

(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).

(5) 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.”

8. Section 124 of the Constitution provides that,

“(1) In this Constitution, unless it is otherwise provided or required by the context...

“public office” means, subject to subsection (2), an office of emolument in the public service;

“public officer” means the holder of any public office, and includes a person appointed to act in any public office;

“the public service” means the service of the Crown in a civil capacity in respect of the government of the Cayman Islands...

*(2) For the purposes of this Constitution, **references to public offices shall not be construed as including...(c)...the Complaints Commissioner** [the Ombudsman]...*

and a person shall not be considered as holding a public office by reason only that he or she is in receipt of a pension or other like allowance in respect of service under the Crown.” (emphasis added).

The Ombudsman Act

9. Pursuant to Section 120(1), the Legislature enacted the Ombudsman Law 2017, now published in consolidated and revised form as the Ombudsman Act (2021 Revision), to make specific provision for the office, functions, jurisdiction and independence of the Ombudsman and to promote the constitutional purposes of the office. The functions and jurisdiction with which the Ombudsman is entrusted include the independent oversight, assurance and implementation of various statutory schemes and protections in matters that are critical to public confidence in the public administration of the Cayman Islands such as police complaints, freedom of information, whistleblowing, data protection and complaints of maladministration (Section 8 and Schedule 2 OA 2021).
10. Section 3 of the Ombudsman Act (2021 Revision) (the OA 2021) provides (with emphasis added),

“Appointment of Ombudsman

3. (1) The Ombudsman shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition.

*(2) **The Ombudsman shall be appointed for a period of seven years and shall not be eligible for re-appointment.***

(3) No person shall be qualified to be appointed as Ombudsman if the person is or has been within the preceding three years —

(a) *an elected member of the Cayman Islands Parliament; or*

(b) *the holder of any office in any political party.*

(4) *The appointment of a person as Ombudsman is not valid if the person is disqualified under subsection (3).*

(5) *The validity of anything done by a person appointed as the Ombudsman is not affected by the fact that the person is or becomes disqualified under subsection (3).*

(6) *The Ombudsman may at any time resign office by instrument in writing addressed to the Governor and the resignation shall take effect as from the date of receipt by the Governor.*

(7) *The Governor may revoke the appointment of the Ombudsman 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.*

(8) *In the event that the Ombudsman is temporarily unable to perform the functions of Ombudsman, by reason of illness, temporary absence from the Islands, leave or any other reason the Governor considers appropriate, the Governor may appoint by instrument in writing one of the Deputy Ombudsmen to act as Ombudsman.*

11. Section 6 OA 2021 provides (with emphases added),

“Independence

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

(2) ***Except as otherwise provided in this Act, the Ombudsman shall be subject to the Public Service Management Act (2018 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.

(3) For the purpose of establishing the budget of the office of the Ombudsman, the Ombudsman shall report and be accountable for expenditure to the Oversight Committee of the Cayman Islands Parliament."

Venice Principles

12. The provisions in the Constitution and the Ombudsman Act clearly reflect the strong influence of the "Principles on the Protection and Promotion of the Ombudsman Institution" (the Venice Principles) promulgated by the Council of Europe's advisory body on constitutional matters, the Venice Commission.

13. The Venice Principles include the following (emphases added),

"1. Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms...the State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence."

2. The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level...

6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the institution

The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.

*10. **The term of the office of Ombudsman shall be longer than the mandate of the appointing body. The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman's mandate shall be renewable only once. The single term shall preferably not be stipulated below seven years.***

11. The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law.

These shall relate solely to the essential criteria of “incapacity” or “inability to perform the functions of the office”, “misbehaviour” or “misconduct” – which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament – shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent, and provided for by law.

12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms...

14. The Ombudsman shall not be given nor follow any instruction from any authorities...”

Conclusions on legislative framework

14. It is clear from the jurisdictional framework that the independence of the Ombudsman is central to her constitutional role. This is demonstrated, for example, by Principle 10 of the Venice Principles, that the term of the office of Ombudsman shall be longer than that of the mandate of the appointing body, and that a term not below seven years is recommended. This is reflected in the OA 2021 at Section 3(2) which provides that the Ombudsman “*shall be appointed for a period of seven years.*”
15. The independence of the Ombudsman is reinforced by the strong limits on the power to remove her, as set out in section 3(7) OA 2021 and section 120(4) (d) of the Constitution. As provided in the Venice Principles (Principle 11), it is essential for the protection of the Ombudsman’s independence that the strictly limited conditions for removal are to be narrowly interpreted. See the similar approach adopted by the Judicial Committee in the analogous case of the judiciary in, ***Hearing on the Report of the Tribunal to the Governor of the Cayman Islands — Madam Justice Levers (Judge of the Grand Court of the Cayman Islands)*** [2010] UKPC 24, at paragraphs 48 to 50.

The Ombudsman of the Cayman Islands/the Applicant

16. The Ombudsman was appointed to her constitutional office by virtue of an “Employment Agreement”, dated 31st March 2022.

17. Since her appointment as Ombudsman, the Applicant has conducted rigorous investigations of several public bodies including the office of the Respondent. So far as the Applicant is aware, public confidence in her has never been questioned.

The retirement condition

18. Notwithstanding the mandatory and unequivocal nature of Section 3(2) OA 2021, Clause 3 of the Employment Agreement, which contains the retirement condition, purports to define the duration of the Ombudsman's tenure as follows,

"Duration of Employment

3. The employee's employment will commence on 4th April 2022 and remains in effect until such date as the employee attains the normal retirement age pursuant to the Public Service Pensions Law (2018 Revision) or for a duration of 7 years, whichever is sooner."

19. By section 3 of the Public Service Pensions Law (2020 Revision), "normal retirement age" means the age of sixty-five. By the Public Service Management (Amendment) Bill 2026, it is proposed that normal retirement age will be increased to the age of 70.
20. By Clause 5 of the Employment Agreement, it is agreed that,

"Terms and Conditions of Employment

5. The terms and conditions of employment are as specified in Schedule 1 of the Personnel Regulations (as amended from time to time), and that Schedule shall be read and construed as part of this Agreement. A copy of Schedule 1 of the Personnel Regulations, current at the date of this Agreement was entered into, is attached."

21. Paragraph 18 of Schedule 1 of the Personnel Regulations provides,

"Normal retirement age and benefits

18.(1) The compulsory normal retirement age is 65 years but a civil servant may be reemployed on a fixed-term employment agreement after reaching

this age in accordance with section 9(4), 26(3) and 41(11) of the principal Act and regulations 6, 16 and 30.”

22. The Ombudsman will be 65 years of age on 10th July 2026 when she will have served four years and four months of the statutory term of seven years.

Statement of Grounds

GROUND ONE:

The retirement condition is ultra vires and unlawful because and to the extent it is incompatible with section 3(2) of the Ombudsman Act and undermines the principle of independence of the Ombudsman, which is reflected in and protected by the Constitution and the Ombudsman Act.

23. The transparently independent exercise of the functions under the OA 2021 is crucial to the effective performance of the role of Ombudsman. The OA 2021 also provides additional safeguards for the independence and freedom of the Ombudsman from political or executive influence.
24. The seven-year term set by section 3(2) OA 2021 is subject to curtailment only on the exceptional grounds set out in section 3(7). It adopts the recommendations of the Venice Commission that the term of office of an Ombudsman should not be below seven years and shall be longer than the mandate of the appointing body. The tenure of the Respondent is four years. The Parliament of the Cayman Islands likewise has a maximum term of four years.
25. The length of the term is plainly designed to entrench the Ombudsman's independence and to give sufficient confidence to an incumbent in their longevity in office to build and develop robust institutional effectiveness. It is intended to be of sufficient length to outlast at least one political cycle, and the tenure of one or more Governors. Section 3(2) OA 2021 also provides that the Ombudsman *“shall not be eligible for re-appointment.”* This removes any potential inducement to seek to please the appointing authority by eliminating the hope of reappointment.

26. The length of the Ombudsman's term represents a conscious and deliberate policy choice on the part of the Legislature. It is a critical safeguard of the independence and effectiveness of the Office of Ombudsman. It is expressed in mandatory and unqualified terms. It does not admit of any exception or ground for shortening the period of office other than those exhaustively set out in section 120 of the Constitution and section 3 OA 2021 (resignation by the Ombudsman or revocation of the appointment by the Governor in limited circumstances).

27. The OA 2021 provides at section 6 that,

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

*(2) **Except as otherwise provided in this Act**, the Ombudsman shall be subject to the Public Service Management Act (2018 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.”*

28. As a matter of statutory construction and as a matter of constitutional principle, it is not possible to override the clear wording of sections 120 of the Constitution and 3(2) of the OA 2021, which are specific to the Office of Ombudsman, by contract or by reference to general provisions of legislation such as those contained in the Public Service Management Law (2018 Revision) (“PSML 2018”) or the Personnel Regulations (2025 Revision) (“PR 2025”). The wording of section 6(2) OA 2021 set out above makes it clear that the OA takes precedence over the PSML. The maxim *lex specialis derogat legi generali*¹ must also apply. See Bennion, Bailey and Norbury on Statutory Interpretation, 8th edition (2020), at para 21.4,

“General and specific enactments in different Acts

¹ A law governing a specific subject matter (lex specialis) overrides a law governing only general matters (lex generalis).

Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the earlier specific provision rather than the later general one. Accordingly, the earlier specific provision is not treated as impliedly repealed...

*The explanation of the rule by Earl of Selborne LC in **Seward v The Vera Cruz (Owners), The Vera Cruz**, is often cited...*

29. In **The Vera Cruz** [1881-1885] All ER Rep 216, the Earl of Selborne LC held, at p.220, that,

“If anything be certain it is that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.”

30. See also **Blackpool Corp v Starr Estate Co Ltd** [1922] 1 AC 27, per Lord Haldane at p.34.²

31. Bennion further states at paragraph 21.4 that,

“The principle may also apply where the special provision is contained in a later Act.” (citing **Richards v Richards** [1984] AC 174 at p.199, and see Lord Hailsham’s speech at pp.199D to 200A).

32. The Ombudsman Act was revised in 2021 but was first enacted in 2017, prior to the 2018 revision of the PSML.

33. The legislation must be read as a coherent whole and it would be entirely contrary to the spirit and letter of the Constitution and the OA 2021, and defeat the specific purpose of section 3(2) OA 2021, if the Respondent could by contract compel the Ombudsman to retire part way through her mandatory statutory seven-year term and/or to seek reappointment (as a civil servant may do pursuant to Paragraph 18 of Schedule 1 PR

² Quoted in full at paragraph 60 below.

2025). In the absence of any other clear and express constitutional or statutory basis that would compel a different conclusion, the Respondent has no power by contract to amend or abbreviate the statutory term of appointment of any person to the Office of Ombudsman, including the Applicant, by reference to *“the normal retirement age”* for civil servants and to provisions of legislation of general application to civil servants, which do not apply to the Ombudsman (see Ground two below).

GROUND TWO:

The Ombudsman is neither a civil servant nor subject to the *“normal retirement age”* for civil servants stipulated in Paragraph 18 of Schedule 1 to the PR 2025 as a matter of ordinary statutory construction; as such any attempt by the instrument of appointment to make her retire at the *“normal retirement age”* for civil servants is *ultra vires* and unlawful.

34. The retirement condition in the Ombudsman’s Employment Agreement purports to require that,

“3. The employee’s employment will commence on 4th April 2022 and remains in effect until such date as the employee attains the normal retirement age pursuant to the Public Service Pensions Law (2018 Revision) or for a duration of 7 years, whichever is sooner.”

35. Clause 5 of the Employment Agreement provides,

“Terms and Conditions of Employment

5. The terms and conditions of employment are as specified in Schedule 1 of the Personnel Regulations (as amended from time to time), and that Schedule shall be read and construed as part of this Agreement. A copy of Schedule 1 of the Personnel Regulations, current at the date of this Agreement was entered into, is attached.”

36. However, Schedule 1 to the PR 2025 may only be contractually imposed on the Ombudsman in so far as its provisions are not incompatible with the OA 2021 and so may apply to her as a matter of statutory construction.

(i) Limited application of PSML to the Ombudsman

37. As set out in ground one above, by section 6(2) OA 2021, the Ombudsman is subject to the PSML 2018 but not where “*otherwise provided*” by the OA 2021. As *lex specialis*, the OA 2021 takes precedence over the PSML.
38. The PSML principally deals with the civil service. The reference to its applicability in the OA 2021 on the limited basis set out in s.6(2) can only be to those of the provisions of the PSML (and its derivative legislation) which are (i) expressly applicable to the office of the Ombudsman, or (ii) apt or intended by virtue of their subject matter to apply to the office of the Ombudsman.
39. By the definitions section of PSML at section 1, the Ombudsman is not within the civil service but sits outside it. A “*civil servant*” is defined as “*a person employed by the government...and is a public officer for the purposes of the Constitution.*” By s.124(2) of the Constitution, the Ombudsman is expressly excluded from the list of public offices, so she is not a civil servant. “*Civil service*” is defined as “*the group comprising all civil servants*”. As the Ombudsman is not a civil servant, by s.124(2) of the Constitution and the definition of “*civil servant*” in the PSML 2018, she is not within the civil service. Nor is the Ombudsman within a “*civil service entity*”, which are exhaustively defined at s.1 PSML 2018 as “*a ministry, portfolio, the Audit Office, the Cabinet Office, the Office of Public Prosecutions or the Judicial Administration.*” The Ombudsman is not a “*public servant*”, as these are defined as “*a person employed by a civil service entity or an employee of a statutory authority or government company*”. She is not within a “*public service*” which is defined as “*the civil service and employees of statutory authorities and government companies*”.
40. As a consequence of these definitions, many parts of the PSML do not apply to the Ombudsman. Those parts that do apply are set out below.

41. Part III PSML sets out the Personnel Authorities of the Governor. By section 6(7),

“The Governor shall retain responsibility for the employment of the Ombudsman in accordance with section 120(2) of the Constitution and part VI of this Law.”

42. Part V PSML sets out the Duties, Responsibilities and Powers of the Head of the Civil Service. These include, at section 18(f), recommending *“the salaries, allowances or other benefits of...(f) ...the Ombudsman...”*

43. There are specific provisions relating to the Ombudsman (and the Auditor General) within Part VI – Personnel Arrangements for Chief Officers, at sections 36, 37 and 38 PSML 2018.

44. Section 36 provides that,

“Procedure for appointing Ombudsman

36. Where there is a vacancy for the position of Ombudsman, section 26 shall apply except that the functions of the Head of the Civil Service shall be undertaken by the Governor.”

45. Section 26 provides that,

“(1) When there is a vacancy or an impending vacancy in the position of [Ombudsman], the [Governor]...shall appoint a new [Ombudsman] in accordance with the requirements of personnel regulations and the following procedures...”

46. Detailed procedures are then set out within the section including defining the duties of the role, the qualifications etc, required of the applicant, notification of the vacancy, shortlisting, interviews and appointment of the most suitable candidate.

47. Section 37 provides (with emphases added),

*“Remuneration and **terms and conditions of employment of Auditor General and Ombudsman***

*(1) **Section 27 shall apply to the Auditor General, the Director of Public Prosecutions and the Ombudsman.***

(2) Section 28(1) and (2)(a) shall apply to the Auditor General, the Director of Public Prosecutions and the Ombudsman except that any reference in those sections to the Head of the Civil Service shall be replaced with the Governor...”

48. Section 27 provides that (with emphases added),

*“(1) A chief officer of a ministry or portfolio is to be employed **in accordance with the terms and conditions for the employment of chief officers specified in personnel regulations.***

*(2) A chief officer of a ministry or portfolio shall be **an employee of the government and employed on the basis of an employment agreement prepared in accordance with personnel regulations.***

(3) If a chief officer of a ministry or portfolio is dismissed, retired early on medical grounds, or retired to improve the organisation (under section 29), the chief officer’s employment with the government is terminated concurrently.”

49. Sections 28(1) and (2)(a) relate to remuneration and provide that,

“(1) The remuneration of a chief officer of a ministry or portfolio shall be agreed from time to time between the chief officer and the [Governor].

(2) The remuneration level of a chief officer of a ministry or portfolio shall –

(a) be within the remuneration band established in the personnel regulations; but, where in the opinion of the Cabinet the public interest so requires, the agreed salary or wages may be reduced for a specified period and the agreed allowances may be reduced or discontinued for a specified period...”

50. Section 38 provides that,

“Dismissal and early retirement of Auditor General and Ombudsman

38. Sections 57, 114(1) and 120(2) of the Constitution shall apply to the Director of Public Prosecutions, the Auditor General and the Ombudsman,

except that any reference to the Head of the Civil Service shall be replaced with the Governor.”

51. Section 29, therefore, which addresses dismissal and early retirement of chief officers of ministries and portfolios, is not applied by section 38 to the Ombudsman.
52. The application of these provisions to the Ombudsman, including section 27, are subject, as a matter of construction, to (i) section 124(2) of the Constitution, which expressly excludes the Ombudsman from “*public offices*” “*for the purposes of the Constitution*”, and (ii) section 6(2) OA 2021, which is *lex specialis* and provides within the section on the independence of the Ombudsman, that “*Except as otherwise provided by this Act, the Ombudsman shall be subject to the Public Service Management Act (2018 Revision).*”
53. Accordingly, in the event of any apparent or potential inconsistency between, on the one hand, the Constitution or the OA 2021, and on the other hand, the PSML 2018 and the PR 2025 made under it, the former must prevail.

(ii) Limited effect of Personnel Regulations 2025

54. The Personnel Regulations 2025, in accordance with which, by sections 27 and 37 PSML, the Ombudsman is to be employed, are made under the power conferred by section 67 PSML 2018 on the Cabinet, on the advice of the Head of the Civil Service, to make regulations covering various civil service matters including standard terms and conditions of employment, remuneration, disciplinary, dismissal and redundancy procedures, internal grievance procedures, and so on. The power to make regulations is confined to matters relating to civil servants and civil service entities. The PR 2025 themselves are principally designed for civil servants and those employed by a civil service entity.
55. Recognising this, section 67(2) PSML 2018 provides that (with emphases added),

*“In making the regulations under this section, the Cabinet shall ensure that **holders of constitutional offices** and any person who performs the functions of such holder on behalf of the holder **enjoy the protection that***

is consistent with the letter and spirit of the Constitution in relation to the performance of those functions.”

56. This is a further statutory protection, in addition to section 124(2) of the Constitution and section 6(2) OA 2021 considered above, demonstrating that the Constitution and the OA 2021 must prevail in the event of any potential conflict with the PSML 2018 and/or the PR 2025.
57. There are many provisions within the PR 2025 that are manifestly unsuitable to be applied to the Ombudsman who is neither a civil servant nor a civil service entity. For example, Regulations 21 to 24 set out detailed procedures for dismissal on grounds of gross or serious misconduct, or retirement on medical grounds. These are read into paragraph 20 of the standard terms and conditions of employment set out in Schedule 1 to the PR 2025. The grounds for revoking the appointment of the Ombudsman under section 3(7) OA 2021, which are to be narrowly construed, must displace these provisions. Section 38 PSML confirms this position.
58. Section 67(2) PSML is implemented in Regulation 18(3) of the PR 2025, which expressly requires the Respondent to align the tenure of the employment of the Ombudsman with section 3(2) OA 2021. Regulation 18 provides,

“Terms of Employment of Chief Officers

Chief officer terms and conditions

18 (1) The terms and conditions of employment under which a chief officer is to be employed under section 27(1) of the principal Act [PSML 2018], shall be those specified in Schedule 1.

(2) Subject to regulations 15 and 16, the tenure of chief officer shall be as follows-

- (a) Caymanians shall be employed on an open-term employment agreement; and*
- (b) Non-Caymanians shall be employed on a fixed-term employment agreement for a period of no more than three years.*

(3) ***Notwithstanding paragraph (2), the tenure of the Ombudsman shall be in accordance with the Ombudsman Act (2021 Revision).***” (emphasis added).

59. Schedule 1 PR 2025 paragraph 18 provides, in relation to retirement, that,

“(1) The compulsory retirement age is 65 years but a civil servant may be re-employed on a fixed term contract after reaching this age...”

60. However, the Ombudsman is not a civil servant and these words in the Schedule are plainly inapplicable to the Ombudsman as a matter of statutory construction. It would be manifestly incompatible both with section 3(2) OA 2021 and the principle of independence enshrined in the OA 2021 and the Constitution to require the Ombudsman to retire prior to the completion of the seven-year statutory term, and then to seek re-employment in accordance with paragraph 18. As Viscount Haldane said in ***Blackpool Corp v Starr Estate Co Ltd*** (see paragraph 30 above),

My Lords, in that state of matters we are bound, in construing the general language of the Act of 1919, to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject-matter appropriate to class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest.”

61. The attempt to apply paragraph 18 of Schedule 1 to the Ombudsman’s tenure by purporting to import it (by general reference to Schedule 1 PR 2025) into the instrument of appointment is equally incompatible with them.

Conclusions

62. The clear effect of the constitutional and statutory provisions set out above is that the Respondent lacks the capacity, by reference to the “*normal retirement age*” to impose a contractual term of office on the Ombudsman shorter than that stipulated by OA 2021 and Regulation 18(3) of the PR 2025. The effect of paragraph 18(1) of Schedule 1 to the PR 2025 is that the normal retirement age is made compulsory for civil servants. However, the Ombudsman is not a civil servant. She is a *sui generis* constitutional and statutory office holder governed by a distinct legislative scheme. Even if she were a civil servant, the language of sections 3 and 6 OA 2021, being a *lex specialis* applicable to the Ombudsman, takes precedence over a law of general application to civil servants such as the PSMA 2018.
63. The language of sections 3 and 6 OA 2021 is so clear and unqualified that the attempt to import the compulsory retirement age for civil servants into the Ombudsman’s Employment Agreement is plainly *ultra vires* and unlawful. The term purporting to do this is void and unenforceable. It is a well-established principle of public law that a contractual term entered into by a public authority that lacks the capacity to do so is void *ab initio* – see **Credit Suisse v Allerdale Borough Council** [1997] QB 306. See in particular Hobhouse LJ at p.350E-F, where he said,

“...Where a statutory corporation purports to enter into a contract which it is not empowered by the relevant statute to enter into, the corporation lacks the capacity to make the supposed contract. This lack of capacity means that the document and the agreement it contains do not have effect as a legal contract. It exists in fact but not in law. It is legal nullity. The purported contract which is in truth not a contract does not confer any legal rights on either party. Neither party can sue upon it...The role of public law is to answer the question: what is the capacity of the local authority to contract?..”

64. The Respondent had no power under the relevant statutes to include the retirement condition in the Ombudsman’s Employment Agreement. It makes no difference that the Ombudsman agreed to it. The condition was and is a legal nullity and is clearly severable from the remainder of the Clause and the remainder of the Agreement.

65. If the courts were to endorse the retirement condition and the position adopted by the Respondent, it would fatally undermine the security of tenure that is critical to the institutional independence of the Ombudsman. It would enable the executive to circumvent and render nugatory the seven-year term and its important public policy purpose by choosing to appoint people who were already within seven years of normal retirement age.
66. The Respondent has stated her intention to treat as binding and to give effect to the retirement condition and/or has failed to confirm, in response to a pre-action protocol letter dated 14th January 2026, that she will not act upon it. Therefore, the court's urgent intervention by means of interim relief is required.
67. On *American Cyanamid* principles, there is a serious issue to be tried as to the legality and enforceability of the retirement clause. The balance of convenience favours a short stay until the issue can be resolved, which the public interest requires should be as soon as possible. It cannot be right that the Applicant should unlawfully be compulsorily retired on 10th July 2026, two years and nine months before the end of her statutory seven-year term of office. This would cause irremediable prejudice, not only to this Applicant's interests, but to the continuing work, which requires planning and programming many months in advance, as well as to public confidence in the independence and effectiveness of the office of Ombudsman. Little or no prejudice to the public interest could be occasioned by a short delay.

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 any enforcement of the Retirement Condition until further order of this Court, alternatively an injunction prior to the

grant of leave restraining the Respondent from acting upon or giving effect to the retirement condition until further order.

- 3) An expedited hearing following the grant of leave, or if needs be a rolled-up hearing with leave and the substantive merits to be determined on the same occasion.
- 4) A Declaration that the Retirement Condition is unlawful, *ultra vires* the Ombudsman Act 2021, and of no legal effect.
- 5) A Declaration that the unlawful Retirement Condition is severable from the remainder of Clause 3 of the Ombudsman's contract, which remains valid and effective for the remainder of her statutory tenure of seven years.
- 6) Such further or other relief as this Honourable Court may deem just; and
- 7) Costs.

DATED: 23 March 2026



TRAVERS THORP ALBERGA
Attorneys-at-Law for the Applicant



IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. G 0073 OF 2026

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

Respondent

NOTICE OF MOTION

TAKE NOTICE that the Court will be moved on the _____ day of _____ 2026 at _____ am/pm on behalf of the Applicant and following the grant by this Court on 27 March 2026 of leave to bring a judicial review in respect of the Respondent's decision to enforce part of Clause 3 of the Applicant's Employment Agreement which purports to terminate the Applicant's appointment as Ombudsman when she reaches "*normal retirement age*" on 10 July 2026 (the "Retirement Condition").

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

- (i) A direction pursuant to Order 53 Rule 3(10A) of the Grand Court Rules that the grant of leave to bring these proceedings by way of judicial review shall operate as a stay of any

enforcement of the Retirement Condition until further order of this Court, alternatively an injunction restraining the Respondent from acting upon or giving effect to the Retirement Condition until further order.

- (ii) An expedited hearing of the judicial review application.
- (iii) A Declaration that the Retirement Condition is unlawful, *ultra vires* the Ombudsman Act 2021, and of no legal effect.
- (iv) A Declaration that the unlawful Retirement Condition is severable from the remainder of Clause 3 of the Ombudsman's contract, which remains valid and effective for the remainder of her statutory tenure of seven years.
- (v) Such further or other relief as this Honourable Court may deem just; and
- (vi) Costs.

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

Introduction

1. The Ombudsman must be appointed for the seven-year term of office stipulated by section 3(2) of the Ombudsman Act (2021 Revision). This application concerns Clause 3 of the Ombudsman's Employment Agreement by which her appointment began on 4th April 2022 and is stated to continue until she reaches normal retirement age under the Public Service Pensions Law, *or* for a duration of seven years, whichever is sooner. The Ombudsman is a constitutional office-holder governed by a distinct legislative scheme, which requires her to be appointed for a fixed term of seven years, and she cannot as a matter of law be subjected to the "*normal retirement age*", thus abbreviating her term, in the same manner as a civil servant. Normal retirement age for a civil servant is currently 65. The Ombudsman will attain the age of 65 on 10th July 2026, which is two years and nine months before the end of her fixed seven-year term of office.

2. The challenge is to that part of Clause 3 of the Employment Agreement purporting to impose the condition that the Ombudsman's "*employment*" continues until she reaches "*normal retirement age*" (the retirement condition). The retirement condition is vitiated by illegality and any attempt to enforce it would likewise be illegal. It is severable from the remainder of the Clause.
3. The Applicant reasonably believes that the Respondent proposes to act upon and give effect to the retirement condition so as to compel the Applicant to retire on 10th July 2026. On 14th January 2026 the Applicant's attorneys wrote to the Respondent seeking written confirmation that the Respondent would not take any steps to bring the Applicant's tenure to an end before the expiry of her statutory term on 4th April 2029 on the basis of her age. No such confirmation was received from the Respondent, either by 28th January 2026 or on any subsequent date. The Applicant has also noted that her accrued leave has now been pro-rated for the year to 10th July 2026 rather than for the full leave year.

Pre-emptive proceedings and urgency: legal framework

4. Injunctions may be used to stop a public body from acting unlawfully by exceeding or abusing its statutory, prerogative or other public law powers, or by acting in breach of statutory or common law procedural requirements. The courts have granted injunctions ordering a public body not to implement proposed changes which were unlawful, and to restrain a public body from taking action to implement an unlawful decision. See **Lewis on Judicial Remedies in Public Law, 7th edition** at paragraphs 8-006 and 8-014, and the cases cited therein. These principles extend to relief against officers of the Crown. See also the discussion at paras 18-013 to 18-020 of **De Smith's Judicial Review, 9th edition** as to the use of interim injunctions and stays in a public law context. See in particular at paragraph 18-020 where it is said that "*Where a final decision has been made but not yet implemented, a stay will prevent implementation of the decision...*"
5. See also ***R (Shrewsbury and Atcham Borough Council) v Secretary of State for Communities and Local Government*** [2008] 3 All ER 548, where Carnwath LJ said at para 33:

“Judicial review proceedings may come after the substantive event, with a view to having it set aside or ‘quashed’; or in advance, when it is threatened or in preparation, with a view to having it stayed or ‘prohibited’.” (emphasis added)

6. There is urgency, and a need for an interim injunction or stay, on the present facts. As set out above, the Respondent is already taking steps to give effect to the unlawful retirement condition so as to compel the Applicant to retire when she reaches the age of 65 on 10th July 2026. The Court should give a direction for an expedited hearing following the grant of leave or should order a rolled-up hearing with leave and the substantive merits to be determined on the same occasion.

Legislative framework

The Constitution

7. The Office of Ombudsman is an independent constitutional office. Section 120 of the Constitution of the Cayman Islands provides as follows,

“Complaints Commissioner

120.— (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.

(3) No person shall be qualified to be appointed as Complaints Commissioner if he or she is or has been within the preceding three years—

(a) an elected member of the Legislative Assembly; or

(b) the holder of any office in any political party.

(4) The office of the Complaints Commissioner shall become vacant—

(a) at the expiration of the period specified in the instrument by which he or she was appointed;

(b) if he or she resigns office by writing under his or her hand addressed to the Governor;

(c) if he or she becomes an elected member of the Legislative Assembly or the holder of any office in any political party; or

(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).

(5) 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.”

8. Section 124 of the Constitution provides that,

“(1) In this Constitution, unless it is otherwise provided or required by the context...

“public office” means, subject to subsection (2), an office of emolument in the public service;

“public officer” means the holder of any public office, and includes a person appointed to act in any public office;

“the public service” means the service of the Crown in a civil capacity in respect of the government of the Cayman Islands...

(2) For the purposes of this Constitution, **references to public offices shall not be construed as including...(c)...the Complaints Commissioner** [the Ombudsman]...

and a person shall not be considered as holding a public office by reason only that he or she is in receipt of a pension or other like allowance in respect of service under the Crown.” (emphasis added).

The Ombudsman Act

9. Pursuant to Section 120(1), the Legislature enacted the Ombudsman Law 2017, now published in consolidated and revised form as the Ombudsman Act (2021 Revision), to make specific provision for the office, functions, jurisdiction and independence of the Ombudsman and to promote the constitutional purposes of the office. The functions and jurisdiction with which the Ombudsman is entrusted include the independent oversight, assurance and implementation of various statutory schemes and protections in matters that are critical to public confidence in the public administration of the Cayman Islands such as police complaints, freedom of information, whistleblowing, data protection and complaints of maladministration (Section 8 and Schedule 2 OA 2021).
10. Section 3 of the Ombudsman Act (2021 Revision) (the OA 2021) provides (with emphasis added),

“Appointment of Ombudsman

3. (1) The Ombudsman shall be appointed by the Governor, acting after consultation with the Premier and the Leader of the Opposition.

(2) The Ombudsman shall be appointed for a period of seven years and shall not be eligible for re-appointment.

(3) No person shall be qualified to be appointed as Ombudsman if the person is or has been within the preceding three years —

(a) an elected member of the Cayman Islands Parliament; or

(b) the holder of any office in any political party.

(4) The appointment of a person as Ombudsman is not valid if the person is disqualified under subsection (3).

(5) The validity of anything done by a person appointed as the Ombudsman is not affected by the fact that the person is or becomes disqualified under subsection (3).

(6) The Ombudsman may at any time resign office by instrument in writing addressed to the Governor and the resignation shall take effect as from the date of receipt by the Governor.

(7) *The Governor may revoke the appointment of the Ombudsman 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.

(8) In the event that the Ombudsman is temporarily unable to perform the functions of Ombudsman, by reason of illness, temporary absence from the Islands, leave or any other reason the Governor considers appropriate, the Governor may appoint by instrument in writing one of the Deputy Ombudsmen to act as Ombudsman.

11. Section 6 OA 2021 provides (with emphases added),

“Independence

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

*(2) **Except as otherwise provided in this Act, the Ombudsman shall be subject to the Public Service Management Act (2018 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.***

(3) For the purpose of establishing the budget of the office of the Ombudsman, the Ombudsman shall report and be accountable for expenditure to the Oversight Committee of the Cayman Islands Parliament.”

Venice Principles

12. The provisions in the Constitution and the Ombudsman Act clearly reflect the strong influence of the “Principles on the Protection and Promotion of the Ombudsman Institution”

(the Venice Principles) promulgated by the Council of Europe's advisory body on constitutional matters, the Venice Commission.

13. The Venice Principles include the following (emphases added),

"1. Ombudsman Institutions have an important role to play in strengthening democracy, the rule of law, good administration and the protection and promotion of human rights and fundamental freedoms...the State shall support and protect the Ombudsman Institution and refrain from any action undermining its independence."

2. The Ombudsman Institution, including its mandate, shall be based on a firm legal foundation, preferably at constitutional level, while its characteristics and functions may be further elaborated at the statutory level...

6. The Ombudsman shall be elected or appointed according to procedures strengthening to the highest possible extent the authority, impartiality, independence and legitimacy of the institution

The Ombudsman shall preferably be elected by Parliament by an appropriate qualified majority.

*10. **The term of the office of Ombudsman shall be longer than the mandate of the appointing body.** The term of office shall preferably be limited to a single term, with no option for re-election; at any rate, the Ombudsman's mandate shall be renewable only once. **The single term shall preferably not be stipulated below seven years.***

11. The Ombudsman shall be removed from office only according to an exhaustive list of clear and reasonable conditions established by law. These shall relate solely to the essential criteria of "incapacity" or "inability to perform the functions of the office", "misbehaviour" or "misconduct" – which shall be narrowly interpreted. The parliamentary majority required for removal – by Parliament itself or by a court on request of Parliament – shall be equal to, and preferably higher than, the one required for election. The procedure for removal shall be public, transparent, and provided for by law.

12. The mandate of the Ombudsman shall cover prevention and correction of maladministration, and the protection and promotion of human rights and fundamental freedoms...

14. The Ombudsman shall not be given nor follow any instruction from any authorities..."

Conclusions on legislative framework

14. It is clear from the jurisdictional framework that the independence of the Ombudsman is central to her constitutional role. This is demonstrated, for example, by Principle 10 of the Venice Principles, that the term of the office of Ombudsman shall be longer than that of the mandate of the appointing body, and that a term not below seven years is recommended. This is reflected in the OA 2021 at Section 3(2) which provides that the Ombudsman “*shall be appointed for a period of seven years.*”
15. The independence of the Ombudsman is reinforced by the strong limits on the power to remove her, as set out in section 3(7) OA 2021 and section 120(4) (d) of the Constitution. As provided in the Venice Principles (Principle 11), it is essential for the protection of the Ombudsman’s independence that the strictly limited conditions for removal are to be narrowly interpreted. See the similar approach adopted by the Judicial Committee in the analogous case of the judiciary in, ***Hearing on the Report of the Tribunal to the Governor of the Cayman Islands — Madam Justice Levers (Judge of the Grand Court of the Cayman Islands)*** [2010] UKPC 24, at paragraphs 48 to 50.

The Ombudsman of the Cayman Islands/the Applicant

16. The Ombudsman was appointed to her constitutional office by virtue of an “Employment Agreement”, dated 31st March 2022.
17. Since her appointment as Ombudsman, the Applicant has conducted rigorous investigations of several public bodies including the office of the Respondent. So far as the Applicant is aware, public confidence in her has never been questioned.

The retirement condition

18. Notwithstanding the mandatory and unequivocal nature of Section 3(2) OA 2021, Clause 3 of the Employment Agreement, which contains the retirement condition, purports to define the duration of the Ombudsman’s tenure as follows,

“Duration of Employment

3. The employee's employment will commence on 4th April 2022 and remains in effect until such date as the employee attains the normal retirement age pursuant to the Public Service Pensions Law (2018 Revision) or for a duration of 7 years, whichever is sooner.”

19. By section 3 of the Public Service Pensions Law (2020 Revision), “normal retirement age” means the age of sixty-five. By the Public Service Management (Amendment) Bill 2026, it is proposed that normal retirement age will be increased to the age of 70.

20. By Clause 5 of the Employment Agreement, it is agreed that,

“Terms and Conditions of Employment

5. The terms and conditions of employment are as specified in Schedule 1 of the Personnel Regulations (as amended from time to time), and that Schedule shall be read and construed as part of this Agreement. A copy of Schedule 1 of the Personnel Regulations, current at the date of this Agreement was entered into, is attached.”

21. Paragraph 18 of Schedule 1 of the Personnel Regulations provides,

“Normal retirement age and benefits

18.(1) The compulsory normal retirement age is 65 years but a civil servant may be reemployed on a fixed-term employment agreement after reaching this age in accordance with section 9(4), 26(3) and 41(11) of the principal Act and regulations 6, 16 and 30.”

22. The Ombudsman will be 65 years of age on 10th July 2026 when she will have served four years and four months of the statutory term of seven years.

Statement of Grounds**GROUND ONE:**

The retirement condition is ultra vires and unlawful because and to the extent it is incompatible with section 3(2) of the Ombudsman Act and undermines the principle of independence of the Ombudsman, which is reflected in and protected by the Constitution and the Ombudsman Act.

23. The transparently independent exercise of the functions under the OA 2021 is crucial to the effective performance of the role of Ombudsman. The OA 2021 also provides additional safeguards for the independence and freedom of the Ombudsman from political or executive influence.
24. The seven-year term set by section 3(2) OA 2021 is subject to curtailment only on the exceptional grounds set out in section 3(7). It adopts the recommendations of the Venice Commission that the term of office of an Ombudsman should not be below seven years and shall be longer than the mandate of the appointing body. The tenure of the Respondent is four years. The Parliament of the Cayman Islands likewise has a maximum term of four years.
25. The length of the term is plainly designed to entrench the Ombudsman's independence and to give sufficient confidence to an incumbent in their longevity in office to build and develop robust institutional effectiveness. It is intended to be of sufficient length to outlast at least one political cycle, and the tenure of one or more Governors. Section 3(2) OA 2021 also provides that the Ombudsman *"shall not be eligible for re-appointment."* This removes any potential inducement to seek to please the appointing authority by eliminating the hope of reappointment.
26. The length of the Ombudsman's term represents a conscious and deliberate policy choice on the part of the Legislature. It is a critical safeguard of the independence and effectiveness of the Office of Ombudsman. It is expressed in mandatory and unqualified terms. It does not admit of any exception or ground for shortening the period of office other than those exhaustively set out in section 120 of the Constitution and section 3 OA 2021 (resignation by the Ombudsman or revocation of the appointment by the Governor in limited circumstances).
27. The OA 2021 provides at section 6 that,

"(1) Subject to the provisions of the Constitution relating to the powers of the Director of Public Prosecutions, in the exercise of the functions of

Ombudsman, the Ombudsman shall not be subject to the direction or control of any other person or authority.

(2) Except as otherwise provided in this Act, the Ombudsman shall be subject to the Public Service Management Act (2018 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."

28. As a matter of statutory construction and as a matter of constitutional principle, it is not possible to override the clear wording of sections 120 of the Constitution and 3(2) of the OA 2021, which are specific to the Office of Ombudsman, by contract or by reference to general provisions of legislation such as those contained in the Public Service Management Law (2018 Revision) ("PSML 2018") or the Personnel Regulations (2025 Revision) ("PR 2025"). The wording of section 6(2) OA 2021 set out above makes it clear that the OA takes precedence over the PSML. The maxim *lex specialis derogat legi generali*¹ must also apply. See Bennion, Bailey and Norbury on Statutory Interpretation, 8th edition (2020), at para 21.4,

"General and specific enactments in different Acts

Where the literal meaning of a general enactment covers a situation for which specific provision is made by another enactment contained in an earlier Act, it is presumed that the situation was intended to continue to be dealt with by the earlier specific provision rather than the later general one. Accordingly, the earlier specific provision is not treated as impliedly repealed...

*The explanation of the rule by Earl of Selborne LC in **Seward v The Vera Cruz (Owners), The Vera Cruz**, is often cited...*

29. In **The Vera Cruz** [1881-1885] All ER Rep 216, the Earl of Selborne LC held, at p.220, that,

"If anything be certain it is that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specially dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from

¹ A law governing a specific subject matter (lex specialis) overrides a law governing only general matters (lex generalis).

merely by force of such general words, without any indication of a particular intention to do so.”

30. See also ***Blackpool Corp v Starr Estate Co Ltd*** [1922] 1 AC 27, per Lord Haldane at p.34.²

31. Bennion further states at paragraph 21.4 that,

“The principle may also apply where the special provision is contained in a later Act.” (citing ***Richards v Richards*** [1984] AC 174 at p.199, and see Lord Hailsham’s speech at pp.199D to 200A).

32. The Ombudsman Act was revised in 2021 but was first enacted in 2017, prior to the 2018 revision of the PSML.

33. The legislation must be read as a coherent whole and it would be entirely contrary to the spirit and letter of the Constitution and the OA 2021, and defeat the specific purpose of section 3(2) OA 2021, if the Respondent could by contract compel the Ombudsman to retire part way through her mandatory statutory seven-year term and/or to seek reappointment (as a civil servant may do pursuant to Paragraph 18 of Schedule 1 PR 2025). In the absence of any other clear and express constitutional or statutory basis that would compel a different conclusion, the Respondent has no power by contract to amend or abbreviate the statutory term of appointment of any person to the Office of Ombudsman, including the Applicant, by reference to *“the normal retirement age”* for civil servants and to provisions of legislation of general application to civil servants, which do not apply to the Ombudsman (see Ground two below).

GROUND TWO:

The Ombudsman is neither a civil servant nor subject to the “normal retirement age” for civil servants stipulated in Paragraph 18 of Schedule 1 to the PR 2025 as a matter of ordinary statutory construction; as such any attempt by the instrument of appointment to make her retire at the “normal retirement age” for civil servants is *ultra vires* and unlawful.

² Quoted in full at paragraph 60 below.

34. The retirement condition in the Ombudsman's Employment Agreement purports to require that,

"3. The employee's employment will commence on 4th April 2022 and remains in effect until such date as the employee attains the normal retirement age pursuant to the Public Service Pensions Law (2018 Revision) or for a duration of 7 years, whichever is sooner."

35. Clause 5 of the Employment Agreement provides,

"Terms and Conditions of Employment

5. The terms and conditions of employment are as specified in Schedule 1 of the Personnel Regulations (as amended from time to time), and that Schedule shall be read and construed as part of this Agreement. A copy of Schedule 1 of the Personnel Regulations, current at the date of this Agreement was entered into, is attached."

36. However, Schedule 1 to the PR 2025 may only be contractually imposed on the Ombudsman in so far as its provisions are not incompatible with the OA 2021 and so may apply to her as a matter of statutory construction.

(i) Limited application of PSML to the Ombudsman

37. As set out in ground one above, by section 6(2) OA 2021, the Ombudsman is subject to the PSML 2018 but not where *"otherwise provided"* by the OA 2021. As *lex specialis*, the OA 2021 takes precedence over the PSML.

38. The PSML principally deals with the civil service. The reference to its applicability in the OA 2021 on the limited basis set out in s.6(2) can only be to those of the provisions of the PSML (and its derivative legislation) which are (i) expressly applicable to the office of the Ombudsman, or (ii) apt or intended by virtue of their subject matter to apply to the office of the Ombudsman.

39. By the definitions section of PSML at section 1, the Ombudsman is not within the civil service but sits outside it. A “civil servant” is defined as “a person employed by the government...and is a public officer for the purposes of the Constitution.” By s.124(2) of the Constitution, the Ombudsman is expressly excluded from the list of public offices, so she is not a civil servant. “Civil service” is defined as “the group comprising all civil servants”. As the Ombudsman is not a civil servant, by s.124(2) of the Constitution and the definition of “civil servant” in the PSML 2018, she is not within the civil service. Nor is the Ombudsman within a “civil service entity”, which are exhaustively defined at s.1 PSML 2018 as “a ministry, portfolio, the Audit Office, the Cabinet Office, the Office of Public Prosecutions or the Judicial Administration.” The Ombudsman is not a “public servant”, as these are defined as “a person employed by a civil service entity or an employee of a statutory authority or government company”. She is not within a “public service” which is defined as “the civil service and employees of statutory authorities and government companies”.
40. As a consequence of these definitions, many parts of the PSML do not apply to the Ombudsman. Those parts that do apply are set out below.
41. Part III PSML sets out the Personnel Authorities of the Governor. By section 6(7),
- “The Governor shall retain responsibility for the employment of the Ombudsman in accordance with section 120(2) of the Constitution and part VI of this Law.”*
42. Part V PSML sets out the Duties, Responsibilities and Powers of the Head of the Civil Service. These include, at section 18(f), recommending “the salaries, allowances or other benefits of...(f) ...the Ombudsman...”
43. There are specific provisions relating to the Ombudsman (and the Auditor General) within Part VI – Personnel Arrangements for Chief Officers, at sections 36, 37 and 38 PSML 2018.
44. Section 36 provides that,

“Procedure for appointing Ombudsman

36. Where there is a vacancy for the position of Ombudsman, section 26 shall apply except that the functions of the Head of the Civil Service shall be undertaken by the Governor.”

45. Section 26 provides that,

“(1) When there is a vacancy or an impending vacancy in the position of [Ombudsman], the [Governor]...shall appoint a new [Ombudsman] in accordance with the requirements of personnel regulations and the following procedures...”

46. Detailed procedures are then set out within the section including defining the duties of the role, the qualifications etc, required of the applicant, notification of the vacancy, shortlisting, interviews and appointment of the most suitable candidate.

47. Section 37 provides (with emphases added),

*“Remuneration and **terms and conditions of employment of Auditor General and Ombudsman***

*(1) **Section 27 shall apply to the Auditor General, the Director of Public Prosecutions and the Ombudsman.***

(2) Section 28(1) and (2)(a) shall apply to the Auditor General, the Director of Public Prosecutions and the Ombudsman except that any reference in those sections to the Head of the Civil Service shall be replaced with the Governor...”

48. Section 27 provides that (with emphases added),

*“(1) A chief officer of a ministry or portfolio is to be employed **in accordance with the terms and conditions for the employment of chief officers specified in personnel regulations.***

*(2) A chief officer of a ministry or portfolio shall be **an employee of the government and employed on the basis of an employment agreement prepared in accordance with personnel regulations.***

(3) If a chief officer of a ministry or portfolio is dismissed, retired early on medical grounds, or retired to improve the organisation (under section 29),

the chief officer's employment with the government is terminated concurrently."

49. Sections 28(1) and (2)(a) relate to remuneration and provide that,

"(1) The remuneration of a chief officer of a ministry or portfolio shall be agreed from time to time between the chief officer and the [Governor].

(2) The remuneration level of a chief officer of a ministry or portfolio shall –

(a) be within the remuneration band established in the personnel regulations; but, where in the opinion of the Cabinet the public interest so requires, the agreed salary or wages may be reduced for a specified period and the agreed allowances may be reduced or discontinued for a specified period..."

50. Section 38 provides that,

"Dismissal and early retirement of Auditor General and Ombudsman

38. Sections 57, 114(1) and 120(2) of the Constitution shall apply to the Director of Public Prosecutions, the Auditor General and the Ombudsman, except that any reference to the Head of the Civil Service shall be replaced with the Governor."

51. Section 29, therefore, which addresses dismissal and early retirement of chief officers of ministries and portfolios, is not applied by section 38 to the Ombudsman.
52. The application of these provisions to the Ombudsman, including section 27, are subject, as a matter of construction, to (i) section 124(2) of the Constitution, which expressly excludes the Ombudsman from *"public offices" "for the purposes of the Constitution"*, and (ii) section 6(2) OA 2021, which is *lex specialis* and provides within the section on the independence of the Ombudsman, that *"Except as otherwise provided by this Act, the Ombudsman shall be subject to the Public Service Management Act (2018 Revision)."*
53. Accordingly, in the event of any apparent or potential inconsistency between, on the one hand, the Constitution or the OA 2021, and on the other hand, the PSML 2018 and the PR 2025 made under it, the former must prevail.

(ii) Limited effect of Personnel Regulations 2025

54. The Personnel Regulations 2025, in accordance with which, by sections 27 and 37 PSML, the Ombudsman is to be employed, are made under the power conferred by section 67 PSML 2018 on the Cabinet, on the advice of the Head of the Civil Service, to make regulations covering various civil service matters including standard terms and conditions of employment, remuneration, disciplinary, dismissal and redundancy procedures, internal grievance procedures, and so on. The power to make regulations is confined to matters relating to civil servants and civil service entities. The PR 2025 themselves are principally designed for civil servants and those employed by a civil service entity.

55. Recognising this, section 67(2) PSML 2018 provides that (with emphases added),

“In making the regulations under this section, the Cabinet shall ensure that holders of constitutional offices and any person who performs the functions of such holder on behalf of the holder enjoy the protection that is consistent with the letter and spirit of the Constitution in relation to the performance of those functions.”

56. This is a further statutory protection, in addition to section 124(2) of the Constitution and section 6(2) OA 2021 considered above, demonstrating that the Constitution and the OA 2021 must prevail in the event of any potential conflict with the PSML 2018 and/or the PR 2025.

57. There are many provisions within the PR 2025 that are manifestly unsuitable to be applied to the Ombudsman who is neither a civil servant nor a civil service entity. For example, Regulations 21 to 24 set out detailed procedures for dismissal on grounds of gross or serious misconduct, or retirement on medical grounds. These are read into paragraph 20 of the standard terms and conditions of employment set out in Schedule 1 to the PR 2025. The grounds for revoking the appointment of the Ombudsman under section 3(7) OA 2021, which are to be narrowly construed, must displace these provisions. Section 38 PSML confirms this position.

58. Section 67(2) PSML is implemented in Regulation 18(3) of the PR 2025, which expressly requires the Respondent to align the tenure of the employment of the Ombudsman with section 3(2) OA 2021. Regulation 18 provides,

“Terms of Employment of Chief Officers

Chief officer terms and conditions

18 (1) The terms and conditions of employment under which a chief officer is to be employed under section 27(1) of the principal Act [PSML 2018], shall be those specified in Schedule 1.

(2) Subject to regulations 15 and 16, the tenure of chief officer shall be as follows-

- (a) Caymanians shall be employed on an open-term employment agreement; and*
- (b) Non-Caymanians shall be employed on a fixed-term employment agreement for a period of no more than three years.*

(3) Notwithstanding paragraph (2), the tenure of the Ombudsman shall be in accordance with the Ombudsman Act (2021 Revision).”
(emphasis added).

59. Schedule 1 PR 2025 paragraph 18 provides, in relation to retirement, that,

“(1) The compulsory retirement age is 65 years but a civil servant may be re-employed on a fixed term contract after reaching this age...”

60. However, the Ombudsman is not a civil servant and these words in the Schedule are plainly inapplicable to the Ombudsman as a matter of statutory construction. It would be manifestly incompatible both with section 3(2) OA 2021 and the principle of independence enshrined in the OA 2021 and the Constitution to require the Ombudsman to retire prior to the completion of the seven-year statutory term, and then to seek re-employment in accordance with paragraph 18. As Viscount Haldane said in ***Blackpool Corp v Starr Estate Co Ltd*** (see paragraph 30 above),

“My Lords, in that state of matters we are bound, in construing the general language of the Act of 1919, to apply a rule of construction which has been repeatedly laid down and is firmly established. It is that wherever

Parliament in an earlier statute has directed its attention to an individual case and has made provision for it unambiguously, there arises a presumption that if in a subsequent statute the Legislature lays down a general principle, that general principle is not to be taken as meant to rip up what the Legislature had before provided for individually, unless an intention to do so is specially declared. A merely general rule is not enough, even though by its terms it is stated so widely that it would, taken by itself, cover special cases of the kind I have referred to. An intention to deal with them may, of course, be manifested, but the presumption is that language which is in its character only general refers to subject-matter appropriate to class as distinguished from individual treatment. Individual rights arising out of individual treatment are presumed not to have been intended to be interfered with unless the contrary is clearly manifest."

61. The attempt to apply paragraph 18 of Schedule 1 to the Ombudsman's tenure by purporting to import it (by general reference to Schedule 1 PR 2025) into the instrument of appointment is equally incompatible with them.

Conclusions

62. The clear effect of the constitutional and statutory provisions set out above is that the Respondent lacks the capacity, by reference to the "*normal retirement age*" to impose a contractual term of office on the Ombudsman shorter than that stipulated by OA 2021 and Regulation 18(3) of the PR 2025. The effect of paragraph 18(1) of Schedule 1 to the PR 2025 is that the normal retirement age is made compulsory for civil servants. However, the Ombudsman is not a civil servant. She is a *sui generis* constitutional and statutory office holder governed by a distinct legislative scheme. Even if she were a civil servant, the language of sections 3 and 6 OA 2021, being a *lex specialis* applicable to the Ombudsman, takes precedence over a law of general application to civil servants such as the PSMA 2018.
63. The language of sections 3 and 6 OA 2021 is so clear and unqualified that the attempt to import the compulsory retirement age for civil servants into the Ombudsman's Employment Agreement is plainly *ultra vires* and unlawful. The term purporting to do this is void and unenforceable. It is a well-established principle of public law that a contractual term entered into by a public authority that lacks the capacity to do so is void *ab initio* –

see *Credit Suisse v Allerdale Borough Council* [1997] QB 306. See in particular Hobhouse LJ at p.350E-F, where he said,

“...Where a statutory corporation purports to enter into a contract which it is not empowered by the relevant statute to enter into, the corporation lacks the capacity to make the supposed contract. This lack of capacity means that the document and the agreement it contains do not have effect as a legal contract. It exists in fact but not in law. It is legal nullity. The purported contract which is in truth not a contract does not confer any legal rights on either party. Neither party can sue upon it...The role of public law is to answer the question: what is the capacity of the local authority to contract?..”

64. The Respondent had no power under the relevant statutes to include the retirement condition in the Ombudsman's Employment Agreement. It makes no difference that the Ombudsman agreed to it. The condition was and is a legal nullity and is clearly severable from the remainder of the Clause and the remainder of the Agreement.
65. If the courts were to endorse the retirement condition and the position adopted by the Respondent, it would fatally undermine the security of tenure that is critical to the institutional independence of the Ombudsman. It would enable the executive to circumvent and render nugatory the seven-year term and its important public policy purpose by choosing to appoint people who were already within seven years of normal retirement age.
66. The Respondent has stated her intention to treat as binding and to give effect to the retirement condition and/or has failed to confirm, in response to a pre-action protocol letter dated 14th January 2026, that she will not act upon it. Therefore, the court's urgent intervention by means of interim relief is required.
67. On *American Cyanamid* principles, there is a serious issue to be tried as to the legality and enforceability of the retirement clause. The balance of convenience favours a short stay until the issue can be resolved, which the public interest requires should be as soon as possible. It cannot be right that the Applicant should unlawfully be compulsorily retired on 10th July 2026, two years and nine months before the end of her statutory seven-year term of office. This would cause irremediable prejudice, not only to this Applicant's

interests, but to the continuing work, which requires planning and programming many months in advance, as well as to public confidence in the independence and effectiveness of the office of Ombudsman. Little or no prejudice to the public interest could be occasioned by a short delay.

For these reasons the Applicant seeks:

1. A direction pursuant to Order 53 Rule 3(10A) of the Grand Court Rules that the grant of leave to bring these proceedings by way of judicial review shall operate as a stay of any enforcement of the Retirement Condition until further order of this Court, alternatively an injunction restraining the Respondent from acting upon or giving effect to the Retirement Condition until further order.
2. An expedited hearing of the judicial review application.
3. A Declaration that the Retirement Condition is unlawful, *ultra vires* the Ombudsman Act 2021, and of no legal effect.
4. A Declaration that the unlawful Retirement Condition is severable from the remainder of Clause 3 of the Ombudsman's contract, which remains valid and effective for the remainder of her statutory tenure of seven years.
5. Such further or other relief as this Honourable Court may deem just; and
6. Costs.

DATED: 2 April 2026



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