COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

2026/PUB/jrv/00014

IN THE MATTER OF Article 96 of The Constitution of the Commonwealth of The Bahamas

AND

IN THE MATTER OF the **JUDICIAL AND LEGAL SERVICES COMMISSION REGULATIONS**

BETWEEN

ACTING SENIOR MAGISTRATE ANISKA ISAACS

Applicant

AND

JUDICIAL AND LEGAL SERVICES COMMISSION

1st Respondent

AND

ATTORNEY GENERAL OF THE BAHAMAS

2nd Respondent

RULING

Before: The Honorable Mr. Acting Justice Raynard S Rigby KC

Appearances: Mrs. Gia Moxey-Lockhart for the Applicant
Mr. Robert Adams KC along with Miss Bryann Hepburn for the First and Second Respondents

Hearing Dates: 3, 4, 10 and 25 June 2026

Interim Injunction – Part 17(3) of the Supreme Court Civil Procedure Rules, 2022 – Intended Judicial Review proceedings – Matters to be taken into account when

determining application – Modified approach of American Cyanamid principles - Administrative leave - Secondment to Office of the Judiciary (Supreme Court and Magistrate Court) - Serious issue to be tried – Balance of convenience - Due process - Public interest in the administration of justice

Held: Application for the Interim Injunction dismissed. Matter not one of urgency as required under Part 17(3) of the Supreme Court Civil Procedure Rules, 2022. There is no strong and sufficient evidence before the Court, at this stage, to warrant the grant of interim injunctive relief.

Rigby J (Actg.)

Introduction

1. The Applicant is a judicial officer appointed by the First Respondent Commission pursuant to the powers vested in the Commission under Article 117 of The Constitution. That Article provides:

> **117. (1) Subject to the provisions of this Constitution, power to make appointments to public offices to which this Article applies and to remove and to exercise disciplinary control over persons holding or acting in such offices is hereby vested in the Governor-General acting in accordance with the advice of the Judicial and Legal Service Commission.**
> **(2) This Article applies to such public offices for appointment to which persons are required to possess legal qualifications as may be prescribed by Parliament.**

2. The First Respondent Commission or the Commission is a constitutional body responsible for advising on the appointment, promotion, transfer and discipline of judicial officers. The First Respondent Commission was established pursuant to and under Article 116 of the Constitution of The Bahamas.

3. The Second Respondent is presumably joined in a representative capacity. The Attorney General of The Bahamas is the chief legal officer and legal adviser for the Government of The Bahamas and its various ministries, departments and offices.

4. The Applicant and the First Respondent Commission shared a presumptive cordial and professional relationship until complaints ensued by local practitioners and members of The Bahamas Bar Association and accused persons who appeared before the Applicant while she served as acting Senior Magistrate in Court No. 8 of the Magistrate's Court. The complaints led to an investigation which concluded on 1 June 2026 with no disciplinary proceedings being instituted against the Applicant.

5. On 27 May 2026 the Applicant was transferred to the Supreme Court in the role of Deputy Registrar. It was that letter, amongst earlier letters, which form the subject of her intended application for judicial review and led her to seek interim injunctive relief against the First Respondent Commission.

The Application

6. The application initially came before the Court as a without-notice application. I determined after hearings on 3 and 4 June 2026 that the Notice of Application and supporting Affidavit of the Applicant be served on the Respondents and I set an inter partes hearing for 10 June 2026. At that hearing, the Respondents' Counsel appeared and requested time to respond to the Affidavit of the Applicant. The matter was thereafter set for substantive hearing on 25 June 2026.

7. At the hearing on 4 June 2026, I intimated to Counsel for the Applicant that I was not satisfied that the facts warranted and justified a without notice application. I directed Counsel to the views expressed by the Privy Council in **National Commercial Bank of Jamaica v. Olint Corp. Ltd. [2009] UKPC 16** and in particular paragraph 13 of that decision, which provides:

> **[13] First, there appears to have been no reason why the application for an injunction should have been made ex parte, or at any rate, without some notice to the bank. Although the matter is in the end one for the discretion of the judge, audi alteram partem is a salutary and important principle. Their Lordships therefore consider that a judge should not entertain an application of which no notice has been given unless either giving notice would enable the defendant to take steps to defeat the purpose of the injunction (as in the case of a Mareva or Anton Piller order) or there has been literally no time to give notice before the injunction is required to prevent the threatened wrongful act. These two alternative conditions are reflected in r 17.4(4) of the Civil Procedure Rules 2002. Their Lordships would expect cases in the latter category to be rare, because even in cases in which there was no time to give the period of notice required by the rules, there will usually be no reason why the applicant should not have given shorter notice or even made a telephone call. Any notice is better than none.**

8. At that hearing as well as the earlier hearing on 3 June 2026, I drew to Counsel's attention that the Notice of Application did not contain a draft Order and that I required some assistance in understanding the terms of the Order being sought from the Court. This observation was repeated at the hearing on 10 June 2026. At

the substantive hearing on 25 June 2026, Counsel for the Applicant produced a draft Order in the following terms:

> **1. The Applicant is hereby granted an Interim Injunction to preserve the status quo pending the commencement of Judicial Review Proceedings and/or any further period and extensions permitted by this Honourable Court.**
>
> **2. The costs of this Application be costs in the cause.**

9. At the substantive hearing on 25 June 2026, after hearing arguments from Counsel for the Applicant and the Respondents, I reserved my decision and promised to deliver my Ruling shortly, which I now do.

<u>Procedural Matrix</u>

10. The Notice of Application for an emergency interim injunction was filed on 29 May 2026. It sets out the grounds of the application as thus:

> **i. The Decisions have caused serious reputational harm within a small jurisdiction.**
> **ii My Judicial authority and independence have been undermined**
> **iii Damages would not be an adequate remedy.**

11. The Notice of Application is supported by the Affidavit of the Applicant and was filed on 29 May 2026. It sets out the factual basis to support the application. I set out the full Affidavit below and thereby I adopt the facts therein which are not materially disputed by the Respondents.

> **3. I was appointed to the position of Deputy Registrar of the Court of Appeal on 18 July 2022.**
> **On 10 June 2024, I was appointed to act as a Senior Magistrate for a perios of 18 months. In December 2025, I was apponted to act as a Senior Magistrate for a further period of 18 months. There is now produced and shown to me a copy of the December letter of appointment marked and exhibited as "A.I.1".**
>
> **3. ADMINISTRATIVE LEAVE DECISION**
> **4. On April 2026, Attorney Devard Francis appeared before me in a trial in Magistrate's Court #8, Nassau Street, which involved a Defendant named Albert Ferguson. Mr. Francis requested an adjournment, which I denied. Mr. Francis subsequently said that both he and his client were leaving the court. Mr. Francis left and the**

Defendant subsequently left. I reported Mr. Francis' conduct, in encouraging the defendant to abscond, to the Bahamas Bar Association on 9 April 2026. Mr. Francis then made a written complaint to the Chief Justice, which was forwarded to my attention on 11 April 2026. On or approximately on that same date, an additional five (5) complaints were forwarded to the Chief Justice involving the exercise of my discretion regarding adjournments and approval of suretors for bail.

5. On 14 April 2026 the Chief Magistrate declined to assign me any first pleas. Some time later, I received and email request relative to two files related to two complaints. However, I was on the bench until after 5 p.m. on the 14 April 2026, and did not see this email.

6. On 15 April 2026, the Chief Magistrate again assigned me no first pleas. That evening at 1:57, my clerk Natori Colette provided me with a hand-delivered letter requesting that the files requested the day before be delivered to the Chief Magistrate by 3:00 p.m., i.e. 1 hour and 3 minutes after they were requested. I drafted an email response indicating that I would provide the requested files but that I needed sufficient time to prepare the responses. I indicated that I would provide the files and my responses by the following week. There is now produced and shown to me a copy of the letter and my response marked and exhibited as "A.I.2".

7. On the 16 April 2026, I was informed that I had been placed on administrative leave, effective 20 April 2026. There is now produced and shown to me a copy of the letter placing me on leave marked and exhibited as "A.I.3".

8. At no time prior to the decisions by the Chief Magistrate and the placement on administrative leave, was I:

- given a proper opportunity to respond;
- informed of lawful authority relied upon for the administrative leave or the removal of first pleas from my court;
- or provided with a fair hearing

9. I have been informed that the decision was purportedly taken pursuant to the Judicial and Legal

Services Commission Regulations. However, in a subsequent email that I sent seeking clarification, the JLSC said that they are able to place judicial officers appointed by them on "administrative leave" pursuant to General Orders. There is now produced and shown to me a copy of my email and the response marked and exhibited as "A.I.4".

4. EXTENSION AND REMOVAL DECISION

10. On 11 May 2026, I was notified that the administrative leave was extended until 20 May 2026. I was also invited to attend a meeting with the JLSC at 1:30 p.m. on 14 May 2026. There is now produced and shown to me a copy of the letter extending the leave marked and exhibited as "A.I.5".

11. On 14 May 2026, I showed up for the meeting with the JLSC at 1:03 p.m. and I was advised that the JLSC members were not ready for me to enter the meeting room. I waited in the reception area. I tried to connect my cellphone and laptop to the internet but was unsuccessful. I enquired from Ms. Anna Neely at 1:38 p.m. as to whether the JSLC was ready to commence the meeting. She said she would make enquiries. At 1:48 p.m. Registrar Toote informed me that an email was sent earlier indicating that the meeting was postponed. I informed him that I thought this was disrespectful not to inform me of a change in the meeting until such a late stage.

12. When I arrived home, I saw that the meeting adjournment email was sent at 1:02 p.m. I was informed that the meeting had to be adjourned because of the Prime Minister's swearing in at Government House. There is now produced and shown to me a copy of the adjournment email marked and exhibited as "A.I.6".

13. On 15 May 2026, I met with three members of the JLSC. They informed me that it was a meeting just to find out if I had any further response to the complaints. I attempted to take verbatim notes but on three occasions I was informed by the Chairperson of the meeting that they were not taking notes, and they had not intended the meeting to last very long. The meeting was rushed and perfunctory lasting less than 30 minutes. Within one hour

after the meeting, I recorded a voice note to capture the details of the meeting.

14. On 19 May 2026, while preparing to return to my duties as a Magistrate, I was notified via WhatsApp message at 6:08 p.m. from Registrar Toote that the administrative leave was extended until 27 May 2026. There is now produced and shown to me a copy of the WhatsApp letter marked and exhibited as "A.I.7".

15. I received no further notice of an extension and therefore went to work on 27 May 2026. While at work, I was informed by my clerk that the Chief Magistrate had the files for my court. At around 11:00 pm., I finally received an email indicating that:

- my appointment as Acting Senior Magistrate was rescinded, and
- I was transferred to the Supreme Court as Deputy Registrar.

There is now produced and shown to me a copy of the email rescinding my appointment marked and exhibited as "A.I.8".

16. I contend that this was done without constitutional authority or due process.

5. FAILURE OF PROCEDURAL FAIRNESS

17. I was not given adequate time to respond to allegations.

18. I was not provided an adequate opportunity to respond to the complaints as I was removed from the first pleas list 2 working days after the first complaint and placed on administrative leave 4 days after the first complaint.

19. I was removed from my position as an acting Senior Magistrate notwithstanding that none of the procedures as required by The Constitution and the Regs. were followed.

6. CONFLICT OF INTEREST

20. I am aware, via two letters received from him, that Mr. Renaldo Toote acted simultaneously as:

> - **Head of Department pursuant to the Regs in recommending an investigation, and as**
> - **Secretary to the Judicial and Legal Services Commission.**
>
> **21. I believe this creates an impermissible conflict of interest and undermines independence of the process. There is now produced and shown to me a copy of those two letters marked and exhibited as "A.I.9".**
>
> **7. PREJUDICE AND IRREPARABLE HARM**
>
> **22. The Decisions have caused serious reputational harm within a small jurisdiction.**
>
> **23. My Judicial authority and independence have been undermined.**
>
> **24. Damages would not be an adequate remedy.**
>
> **8. PREJUDICE AND IRREPARABLE HARM**
>
> **19. The continuation of administrative leave and removal decisions causes ongoing harm.**
> **20. I therefore seek urgent interim relief preserving my position pending determination of my intended Judicial Review Application which I have instructed my (sic) Attorneys to file.**

12. At the hearing on 3 June 2026, which ended due to the loss of internet connection by the Applicant's Counsel, I inquired if the First Respondent Commission concluded its investigations into the complaints. At the hearing, Counsel read a letter dated 1 June 2026 from the Chairman of the First Respondent Commission. I inquired if the Applicant intended to place it before the Court. The Supplemental Affidavit of the Applicant was filed on 4 June 2026. I set out below paragraphs 4 and 5 of that Affidavit:

> **4. I was appointed to the position of Deputy Registrar of the Court of Appeal on 18 July 2022. On 10 June 2024, I was appointed to act as Senior Magistrate for a period of 18 months. In December 2025, I was appointed to act as Senior Magistrate for a further period of 18 months. Now produced and shown to me a copy of the December letter of appointment marked and exhibited as "AI1".**

5. Following the filing of the Notice of Application for an Interim Injunction on the 29th May, 2026, I received a letter from the Chairman of the 1st Respondent herein indicating that the 1st Respondent determined that no recommendation will be made for disciplinary proceedings to be instituted against me. Now produced and shown to me marked as exhibit "AI2" is a copy of the said letter dated 1st June, 2026.

13. The Applicant also filed a Certificate of Urgency on 29 May 2026, which sets out the following matters:

> **I, GIA C. MOXEY-LOCKHART, of Counsel and Attorney-at -Law for the Applicant (sic) herein do hereby certify that the application by Notice of Application filed herein on behalf of the Applicant on the 29th May 2026 for an Interim Injunction Order are matters of urgency in that the Decisions of the 1st Respondent have caused serious reputational harm to the Applicant, the Judicial Authority and Independence of the Applicant have been undermined, Damages would not be an adequate remedy and any successful Judicial Review Decision would be rendered nugatory AND THAT the Applicant prays for these reasons, injunctive relief herein.**

14. The Respondents' Affidavit in opposition to the application was sworn by Mr Renaldo Toote, the Registrar of the Supreme Court and the Secretary of the First Respondent Commission. That Affidavit was filed on 16 June 2026. I set out below several paragraphs from that Affidavit, particularly paragraphs 4, 5, 6, 7, 8, 9, 10 and 27:

> **4. I make this Affidavit in connection with the 'urgent' application filed on 9 June 2026 filed by the Applicant for an interim injunction to preserve her position pending determination of her intended judicial review application which she has instructed Attorneys to file on her behalf by reason of the Commission's determination to recommend to the Governor-General that the Applicant's secondment as Acting Senior Magistrate be rescinded and that the Applicant be transferred to the Supreme Court in her substantive capacity as Deputy Registrar, with effect from 27 May 2026. In this regard, I have also read the Applicant's Affidavit and Supplemental Affidavit filed 29 May 2026 and 4 June 2026, respectively, in**

support of the said application for interim injunctive relief.

5. Although the Applicant has deposed that she intends to seek relief by way judicial review of the Commission's determination, no application for leave to apply for judicial review has been made by the Applicant, as far as I am aware, to date. Notwithstanding, without prejudice to the Commission's right to object to the Applicant's application for, what appears to be, a free-standing interim injunction prior to the grant of leave to apply for judicial review based on the facts of this particular case, I respond to the Applicant's Affidavit as follows.

Substantive Appointment of Applicant

6. Prior to June 2024, the Governor General, acting on the recommendation of the Commission, appointed the Applicant to the substantive post of Deputy Registrar in the Court of Appeal. Now produced and shown to me and marked "RT-1" is a true copy of the Applicant's letter of appointment dated 26 July 2022.

Secondment of Applicant

7.With effect from 10 June 2024, the Applicant was *"seconded to the Office of the Judiciary (Supreme and Magistrate Courts) and appointed to act as Senior Stipendiary and Circuit Magistrate"* for a period of 18 months. Now produced and shown to me and marked "RT-2" is a true copy of the Applicant's letter of secondment dated 29 July, 2024.

8. The Applicant was assigned Magistrate's Court No. 8.

9. Thereafter, with effect from 10 December 2025, the Applicant's *"seconded to the Office of the Judiciary (Supreme and Magistrate Courts) and appointed to act as Senior Magistrate"* was extended for a further period of 18 months. A true copy of the letter extending the Applicant's secondment is now produced and shown to me marked "RT-3".

Conduct Complaints Received By The Commission's and Investigation

> **10. Between 10 – 13 April 2026, the Commission received several formal written complaints from members of The Bar regarding the conduct and temperament displayed by the Applicant in various proceedings as the Stipendiary and Circuit Magistrate sitting in Magistrate's Court No. 8. In addition, the Commission received a complaint made on 11 April 2026 by the Applicant relating to the conduct of the Chief Magistrate.**
> ...
>
> **27. On 26 May 2026, the Commission made a determination that the Applicant's *"...secondment as Acting Senior Magistrate be rescinded..."* and the Applicant *"...be transferred to the Supreme Court in your substantive capacity as Deputy Registrar, with effect from 27 May 2026."* By letter dated 27 May 2026, I informed the Applicant of the decision made by the Commisssion, which decision was also thereafter duly presented as the Commission's recommendation and advice to the Governor-General and implemented. Now produced shown to me and marked "RT-18" is a true copy of the letter dated 27 May 2026 to the Applicant.**

15. By the time of the hearing of the inter partes application, the Applicant had not yet filed the application for leave to seek judicial review as required under Part 54 of the Civil Procedure Rules, 2022 ("**CPR**").

Counsels' Submissions in summary

16. There was no dispute by Counsel for the Claimant and the Respondents that the Court has the jurisdiction to grant an interim injunction. That jurisdiction is set out in section 21 of the Supreme Court Act, Chapter 53 and Part 17 of the CPR. Part 17 of the CPR provides:

> **17.1 Orders for interim remedies: relief which may be granted.**
> (1) The Court may grant interim remedies including —
> (a) an interim declaration;
> **(b) an interim injunction;**
> (c) an order authorising a person to enter any land or building in the possession of a party to the proceedings for the purposes of carrying out an order under subparagraph (h);
> (d) an order directing a party to prepare and file accounts relating to the dispute;
> ...

(3) The fact that a particular type of interim remedy is not listed in paragraph (1) does not affect any power that the Court may have to grant that remedy.
(4) The Court may grant an interim remedy whether or not there has been a claim for a final remedy of that kind.
(5) The Chief Justice may issue a practice direction in respect of the procedure for applying for an interim order including, in particular, interim injunctions, search orders and freezing orders.

17.2 Interim junctions and similar orders including search orders and freezing orders.
(1) **This rule deals with applications for —**
(a) an interim injunction under rule 17.1(1)(b);
(b) a search order under rule 17.1(1)(l);
(c) a freezing order under rule 17.1(1)(j);
(d) an order authorising a person to enter any land or building for the purpose of carrying out an order under rule 17.1(1)(h); and
(e) an order for the detention, custody or preservation of relevant property under rule 17.1(1)(h)(ii).
(2) Unless the Court otherwise directs, a party applying for an interim order under this rule must undertake to abide by any order as to damages caused by the granting or extension of the order.
(3) An application for an interim order under this rule may in the first instance be made on three days' notice to the respondent.
(4) The Court may grant an interim order under this rule on an application made without notice for a period of not more than twenty-eight days, unless any of these Rules permits a longer period, if it is satisfied that —
(a) in a case of urgency no notice is possible; or
(b) that to give notice would defeat the purpose of the application.
(5) On granting an order under paragraph (4) the Court must —(a) fix a date for further consideration of the application; and
(b) fix a date, which may be later than the date under subparagraph (a), on which the interim order will terminate unless a further order is made on the further consideration of the application.

17.3 Time when an order for interim remedy may be made.
(1) An order for an interim remedy may be made at any time, including —
(a) after judgment has been given; and

(b) before a claim has been filed.
(2) Paragraph (1) is subject to any rule which provides otherwise.
(3) The Court may grant an interim remedy before a claim has been made only if —
(a) the matter is urgent; or
(b) it is otherwise necessary to do so in the interests of justice.
(4) Unless the Court otherwise orders, a defendant may not apply for any of the orders listed in rule 17.1(1) before filing an acknowledgement of service under Part 9.
(5) If the Court grants an interim remedy before a claim has been filed, it must require an undertaking from the claimant to file and serve a claim form by a specified date.

17. Mr. Adams KC alerted the Court's attention to Part 54.3 of the CPR in light of the application being to aid the intended judicial review proceeding. Part 54.3 provides:

> **(10) Where leave to apply for judicial review is granted, then —**
> **(a) if the relief sought is an order of prohibition or certiorari and the Court so directs, the grant shall operate as a stay of the proceedings to which the application relates until the determination of the application or until the Court otherwise orders;**
> **(b) if any other relief is sought, the Court may at any time grant in the proceedings such interim relief as could be granted in an action begun by writ.**

18. The Applicant's written and oral submissions focused on the First Respondent Commission's decision by letter dated 16 April 2026 to place the Applicant on administrative leave and the subsequent extensions of the leave by letters dated 11 and 19 May 2026. Mrs. Moxey-Lockhart categorised the letter of 27 May 2026 as the Commission purporting "**to rescind the Applicant's appointment as Acting Senior Magistrate and return her to the office of the Deputy Registrar**". I set out the full contents of that letter because it prominently featured during the submissions of Counsel. The letter of 27 May 2026 states:

Secondment as Senior Magistrate

> **I am to advise that the Judicial and Legal Services Commission (the Commission) has determined that your secondment as Acting Senior Magistrate be rescinded and that you be transferred to the Supreme Court, in your substantive capacity as Deputy Registrar, with effect from 27th May 2026.**

> **You should therefore report to the Supreme Court Registry on Monday, 1 June 2026, to be allocated your office space and assigned files.**
>
> **I am also instructed that the Commission will advise you, by separate correspondence, within the next day or so, as to the outcome of their inquiries into the several complaints which had been made against you.**

19. Mrs. Moxey-Lockhart argued that the decisions, represented by the letters of 16 April 2026, 11, 19 and 27 May 2026 (collectively the "**Impugned Letters**") are "**unlawful, unconstitutional, procedurally unfair, irrational and constitute an impermissible interference with [the Applicant's] judicial independence**". She argued that the Commission "**failed to identify any provision of the Constitution, any statute or any Judicial and Legal Service Commissions Regulation authorising such [administrative] leave**". She suggested that the serious issue was whether General Orders lawfully applied to the Applicant's employment to authorise her suspension or removal from active judicial function.

20. The heart of Mrs. Moxey-Lockhart's submission was that the Commission had no authority to rescind the Applicant's secondment. She deemed the terms of the letter of 27 May 2026 to be a rescission and a transfer, which the Commission had no power to do. She stressed that the Impugned Letters deprived the Applicant of "**the office to which she had been constitutionally appointed**".

21. It was also submitted by Mrs. Moxey-Lockhart that the Impugned Letters had the effect of imposing adverse measures before any lawful predicate was established. That is, by ultimately deciding by the letter of 1 June 2026 that none of the complaints warranted or justified the institution of disciplinary proceedings, the Applicant was gravely prejudiced and punished when she was sent on administrative leave.

22. Mrs. Moxey-Lockhart also urged upon the Court that the complaints which led to the Impugned Letters had the consequence of interfering with the Applicant's judicial independence. That the complaints in substance arose out of the Applicant's "**judicial decisions concerning adjournments, bail and case management**" and thereby were not appropriate to lead to any form of discipline or administrative leave for that matter.

23. The Applicant relied on **Rees v Crane [1994] UKPC 4** to support the proposition that the Applicant was entitled to adequate time to respond to the complaints, and this was breached because she was denied access to her files when she was placed on administrative leave. I must add at this juncture that the Applicant did not disclose in her affidavit evidence her responses to the various complaints. I inquired of this at the hearing on 3 June 2026. The responses were also not

disclosed in her Supplemental Affidavit. They were exhibited in the Affidavit of Renaldo Toote.

24. In **Rees (supra)** the brief facts were set out in the speech of Lord Slynn of Hadley, which I set out below.

> In brief the appeal is against orders of the Court of Appeal (Ibrahim and Davis JJA (Sharma JA dissenting)) that (i) on the application for judicial review the decisions (a) of the Chief Justice and/or of the commission to prohibit the respondent from presiding in court and (b) of the commission to represent to the President that the question of removing the respondent from office ought to be investigated, being ultra vires, should be quashed and the commission should be prohibited from representing to the President that such question ought to be investigated and (ii) on the constitutional motion (a) the first three appellants should be prohibited from proceeding as a tribunal to inquire into the question of removing the respondent as a judge of the High Court and (b) damages should be assessed by a judge in chambers.

25. The Privy Council in **Rees (supra)** held in part that:

> **Although natural justice would not normally require that a person be told of the complaints against him and given an opportunity to answer them if the investigation into the complaints was purely a preliminary inquiry and the person affected was entitled to be heard at a later stage of the inquiry or investigation, there was no universal rule to that effect. Nor did it follow that because the rules of natural justice applied to the procedure as a whole they did not have to be applied at any individual stage. The courts were not bound by rigid rules as to when the audi alteram partem rule applied and would have regard to all the circumstances of the case. Although the respondent would have had an opportunity to answer the complaint made against him at a later stage before the tribunal and before the Judicial Committee, fairness required that the audi alteram partem rule be applied at the commission stage of the proceedings to suspend or dismiss a judge. The commission was not intended simply to be a conduit by which complaints were passed on by way of representation to the President but had to be satisfied that the complaint had prima facie sufficient basis in fact and was sufficiently serious to warrant a representation**

to the President, being effectively the equivalent of impeachment proceedings.

26. The Applicant summed up her application for interim relief by asserting that the Court should maintain the status quo pending the determination of the judicial review proceedings (assuming that leave will be granted) by placing the Applicant on administrative leave as the Acting Senior Magistrate, the status quo which presented prior to the letter of the 27 May 2026.

27. The Respondents' Counsel, Mr. Adams KC, attacked the application by arguing that the jurisdiction of the Court was not properly invoked under Part 17.3(3)(a) of the CPR because the Court can only **grant** interim relief if satisfied that the matter is urgent. He disputed that there was any urgency to justify the application. He also stressed that the application did not invoke (b) of Part 17.3(3), that is, the interim relief is "**necessary to do so in the interest of justice**". He referred the Court to the Caribbean Civil Court Practice 13th Edtn. Note 14.30 which states:

> **Interim Remedy Before a Claim has been made**
>
> **BARB 17.2; EC 17.2(3); TT 17.2(1)(a): The court may grant an interim remedy before a claim has been made only if:**
> **(i) the matter is urgent; or**
> **(ii) it is otherwise necessary to do so in the interests of justice.**
> **The court will require an undertaking for a claim form to be issued and served by a specified date: BARB 17.3; EC 17.2(5); TT 17.2(3).**
> **Generally the court will consider that it is desirable to grant this relief before a claim has been made in circumstances where there is an appreciable risk that the party who was to be restrained from doing a forbidden act would, if put on notice, do that act before any appropriate relief could be obtained. In such circumstances, not only would the court be prepared to grant an interim remedy before a claim has been made but would be prepared to do so without the party to be restrained having been given notice of the proceedings or the application.**

28. In light of the draft Order being produced by the Applicant's Counsel, Mr. Adams KC withdrew his other preliminary argument that the application violated Part 11.7(2) of the CPR.

29. In the alternative, Mr. Adams KC argued that if the Court was not satisfied that the jurisdiction was not invoked under Part 17.3(3) of the CPR that the application should also be dismissed because the merits did not show a serious issue to be tried. In his written submissions and oral presentation, he argued that the letter of

27 May 2026 did no more than end the secondment of the Acting Magistrate role and amounted to an "**inter transfer**" to the Supreme Court. He relied on the Applicant's appointment letter dated 29 July 2024, suggesting that it in effect amounted to the Applicant being seconded to the Office of the Judiciary (Supreme & Magistrate Courts) and not exclusively to the Magistrate's Court. It is convenient at this point to set out the full terms of the letter of 29 July 2024:

> **By Order No. 56/2024 dated 3 June, 2024, Her Excellency, the Governor General, acting on the advice of the Judicial and Legal Service Commission, pursuant to Article 117 of the Constitution and Regulation 24 of the Judicial and Legal Service Commission Regulations, has approved that you be seconded to the Office of the Judiciary (Supreme & Magistrate Courts), and appointed to act as Senior Stipendiary and Circuit Magistrate, Scale JL12A, under Section 17(1)(a) of the Public Service Act, for a period of eighteen (18) months with effect from 10 June, 2024.**

30. Counsel for the Respondents also directed the Court's attention to the Judicial and Legal Services Commission Regulations and the definition of "transfer", which states:

> **"transfer" means the conferment upon a public officer, to whom these Regulations apply, whether permanently or otherwise of some public office other than that to which the officer was last substantively appointed, not being a promotion; <u>but the posting of an officer between duty posts in the same grade within a Department shall not be regarded for this purpose as a transfer</u>.**

31. Mr. Adams KC argued that there is a strong public interest against restraining the Commission. He relied on **British Standards Institution v R (on the application of RRR Manufacturing Pty Ltd). [2024] EWCA Civ 530** at paragraphs 104 to 106.

> 104. Ground 1 concerns the approach of the Administrative Court to the grant of interim relief in the form of a normal (prohibitory) injunction. In private law cases the three-stage approach of the Court to the grant of an interim injunction has been settled since *American Cyanamid v Ethicon Ltd [1975] AC 396*. The basic principle is that so long as there is a serious issue to be tried, the Court should take the course which seems likely to cause least irremediable prejudice if it turns out that the injunction should not have been granted (or withheld, as the case may be). This will depend on the extent

to which the party who is ultimately successful can be compensated, either (if a successful claimant is not granted an injunction at the interlocutory stage) by an award of damages, or (if a successful defendant has an injunction granted against them at the interlocutory stage) under the cross undertaking: see the summary by Lord Hoffmann in *National Commercial Bank Jamaica Ltd v Olint Corpn Ltd [2009] UKPC 16, [2009] 1 WLR 1405 at [16]-[18]*. In practice in many cases, at any rate in commercial disputes, the interests of both parties are ultimately financial ones, and the balance of convenience will involve assessing the respective risks to their financial interests accordingly.

105. Public law disputes are of course rather different. Those who exercise public law functions do not do so in their own commercial interests but in the public interest. This is seldom capable of being quantified in money. Two things follow. First, as the Judge recognised, damages will rarely be an adequate remedy in the context of judicial review claims, and (assuming the case meets the threshold at the first stage) the grant or withholding of relief will turn on the balance of convenience. Second, in assessing the balance of convenience the risk of detriment to the public interest is seldom capable of being directly measured against the risk of prejudice to the claimant as the two are essentially incommensurable. These points were well expressed by Cranston J in the Medical Justice case at [12] as follows:
"In judicial review, this consideration [ie the balance of convenience] varies from its application in private law, because generally speaking damages will not be payable in the event of an unlawful administrative act, nor will a public authority suffer financial loss from being prevented from implementing its policy. The public interest is strong in permitting a public authority to continue to apply its policy when ex hypothesi it is acting in the public interest. That wider public interest cannot be measured simply in terms of the financial or individual consequences to the parties, a point made by Browne LJ in his judgment in *Smith v Inner London Education Authority [ie [1978] 1 All ER 411]* at page 422h."

106. In those circumstances two principles are established by the authorities. First, as Cranston J says, there is a strong public interest in not restraining a public body from exercising its powers. Hence the Court will generally be reluctant to grant interim relief where there is not a strong prima facie case: see the OFSTED case at [66] per Lindblom LJ. And second, where

the public interest concerned is that of public health and safety, this is a very important objective and one that must carry great weight: see the cases cited by Elisabeth Laing LJ at paragraph 54(iii) above.

32. He also argued that the Applicant does not have a strong prima facie case. This argument rests on the premise that the legal principles establish that the rules of natural justice do not generally apply to decisions to place a public officer on administrative leave or suspension pending an investigation. He relied on **Lewis v Heffer 1 WLR 1061** (at 1073b-D):

> **13 Natural justice**
> **But then comes the point: are the NEC to observe the rules of natural justice? In John v Rees ([1969] 2 All ER 274 at 305, [1970] Ch 345 at 397) Megarry J held that they were. He said:**
>
> **'... suspension is merely expulsion pro tanto. Each is penal, and each deprives the member concerned of the enjoyment of his rights of membership or office. Accordingly, in my judgment the rules of natural justice prima facie apply to any such process of suspension in the same way that they apply to expulsion.'**
>
> **Those words apply, no doubt, to suspensions which are inflicted by way of punishment, as for instance when a member of the Bar is suspended from practice for six months, or when a solicitor is suspended from practice. But they do not apply to suspensions which are made, as a holding operation, pending enquiries. Very often irregularities are disclosed in a government department or in a business house; and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is given notice of the charge and an opportunity of defending himself, and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply: see Furnell v Whangarei High Schools Board.**

So in this case the rules of natural justice do not apply. The suspensions are not invalid on that account.

Analysis and Disposition

CPR Part 17.3(3)

33. The Court's jurisdiction under Part 17.3(3) of the CPR to grant an interim relief before the filing of an action is reserved for applications that can satisfy sub-rules (a) or (b). I deem the use of "**or**" in the rule as conjunctive. That is, an applicant must come within one or both of the sub rules. The rule however adds another layer to the interim relief regime. It is not a new requirement. The rule, in my view, is intended to amplify the further ingredient(s) needed when seeking interim relief **before** the filing of a claim. That is, an applicant must still also satisfy the requirements in rules 17.1 or 17.2.

34. I note that the Notice of Application before me makes no reference to Part 17.3(3). It relies on Part 17-17.1 of the CPR and **"under the inherent jurisdiction of the Supreme Court".** Similarly, the Certificate of Urgency is silent as to the jurisdiction under Part 17.3(3).

35. I agree with Counsel for the Applicant and the Respondents that the Court has the jurisdiction under Part 17.3(3) to grant interim relief before the filing of a claim even in judicial review proceedings. That jurisdiction requires the Court to ensure that either (a) or (b), or both, are satisfied. The use of "**may**" in the Part denotes that the Court has a discretionary jurisdiction. That follows from the intent of section 21 of the Supreme Court Act as well as Part 17.1 of the CPR.

36. Counsel for the Applicant advanced the argument that the application satisfies both limbs (a) and (b). Mr. Adams KC disagreed and argued that the application was made when the Commission's decision was already made and implemented. He also argued that (b) requires a higher threshold, which the application materially lacks.

37. I accept the arguments of the Respondents that the application by way of the filed Notice of Application lacks the degree of urgency required under Part 17.3(3)(a) of the CPR. The rule requires the factual matrix to be urgent and to objectively qualify as urgent. It must not be urgent only in the mind of an applicant seeking to invoke the jurisdiction.

38. When the rules refer to "urgent" that can only mean that immediate action is warranted or there is a time sensitivity to justify invoking the Court's jurisdiction. There must be some grave peril that may befall if the Court refuses to intervene.

39. In **Blackstone's Civil Practice 2023**, in discussing the English Rules, the authors describe urgent cases as:

> **A case is 'urgent' where there is a true impossibility in giving the requisite three clear days' notice or in arranging for the issue of process. There has to be an element of threatened damage, requiring the immediate intervention of the court, which may occur between the without-notice hearing and the hearing of an effective application (Mayne Pharma (USA) Inc v Teva UK Ltd [2004] EWHC 324b (Ch). An 'impossibility' resulting from delay on the part of the claimant will not suffice (Bates v Lord Hailsham of St Marylebone [1972] 1 WLR 1373).**

40. On the facts before me as set out in the Affidavits, it seems to me that if there was in fact an urgency it arose when the Applicant was placed on administrative leave. That occurred on 20 April 2026. By letter dated 16 April 2026 the Applicant was informed by Mr. Toote that she was being placed on administrative leave for the period of 20 April 2026 to 11 May 2026. That letter too referenced the complaints which "**were forwarded to you over the past few days concerning your conduct**". The Applicant was at that point relieved of "**all judicial and administrative duties**". She also knew that an investigation "**into your conduct**" had commenced and that she was afforded an opportunity to respond to the complaints.

41. Mrs. Moxey-Lockhart's arguments that the alleged threat to the Applicant's judicial independence and the exercise of her judicial discretion and decisions as a Magistrate is under "attack" by the terms of the letter of 27 May 2026 seems hallow. It is my view that any alleged "threat", if one existed, emanated from as early when the Applicant was placed on administrative leave and relieved of her judicial functions. She knew as early as 16 April 2026, more than one month before her application was filed, that she was unable to carry out judicial functions. In fact, the administrative leave was lifted by the terms of the letter of 27 May 2026, thereby allowing her to enjoy her judicial independence and to exercise her judicial decision making.

42. I was not satisfied that the matter was urgent when it first came before me on 3 June 2026 and that is buttressed by my decision to have an inter partes hearing on 10 June 2026.

43. It also seems clear on the affidavit evidence before the Court that the Applicant cannot satisfy (b) of Part 17.3(3). There is no element of this case that can lead to a determination that the application and relief sought are "**necessary to do so in the interests of justice".** That term suggests that there is some degree of unfairness that will occur but for the Court's intervention. There are no facts before me that can lead me to conclude or find that unless I grant the Order sought the Applicant (or some unrelated third party) may be denied a "fair" outcome or face grave prejudice.

44. In my judgment the fact that the requirement(s) of Part 17.3(3) (a) or (b) was not satisfied does not lead to the automatic rejection of the application. The Court, in assessing an application for interim injunctive relief, ought to proceed to consider the principles enunciated by Lord Diplock in the locus classicus and oft-cited English House of Lords decision of **American Cyanamid Co v Ethicon Ltd [1975] 1 All ER 504**. I remind myself that the non-compliance with a particular rule in the CPR is not to be a means of depriving a litigant from relief. This is clearly spelt out in the overriding objectives of the CPR. I only need to refer to Parts 1.1 and 26.9 of the CPR.

Modified American Cyanamid Co v Ethicon Ltd principles

45. It is now universally accepted that a party seeking an interim relief must satisfy the established principles set out in the decision of the English House of Lords in **American Cyanamid Co (supra)**. In **American Cyanamid Co (supra)**, Lord Diplock established a four-stage test; namely, (i) whether there is a serious issue to be tried; (ii) whether damages would be an adequate remedy; (iii) whether the 'balance of convenience' favours the plaintiff or defendant; and (iv) consideration of any special factors that might affect the exercise of the court's discretion.

46. The Applicant is seeking relief before applying for leave to commence judicial review. The principles, that is, the four-stage test outlined by Lord Diplock in **American Cyanamid Co (supra)** is not strictly applicable. They are modified. Based on the decision of Cranston J in **R (Medical Justice) v Secretary of State for the Home Department [2010] EWHC 1425**, it is necessary for the court to establish and consider the following: (i) whether there is a serious issue to be tried with a realistic prospect of success; (ii) whether in any particular case damages are inadequate; and (iii) the balance of convenience as between the different parties (see also **Smith and others v Inner London Education Authority [1978] 1 All ER 411**).

47. In **Aston v United Kingdom Council for Psychotherapy [2025] EWHC 3288** Mr. Justice Cotter in addressing an application for interim relief through an injunction seeking an order reinstating the claimant to the register of physiotherapist without restrictions pending the Adjudication Hearing, sets out the core principles to be considered on the application. I adopt his words, which are at paragraphs 41 to 45, of the decision:

> **41. Taking the questions in turn establishing a serious issue to be tried does not require the applicant to show a prima facie case on the merits. Rather a serious issue to be tried has the same meaning as "real prospect of success" in the summary judgment context. The test is not a demanding one and serves only to exclude those cases where the claim is frivolous or vexatious, or**

> **otherwise demonstrably bad. When addressing the test, the court should not attempt to resolve conflicts of fact on which the claims of either party may ultimately depend (by conducting a mini-trial), or difficult points of law (which call for detailed argument and mature considerations); these are matters for trial.**
>
> **42. If a serious issue to be tried has been established then the Court should go on to the second stage and consider whether, if the Claimant were to succeed at trial and establish a right to a permanent injunction, the Claimant would be adequately compensated by an award of damages for the loss sustained as a result the Defendant continuing to do what it should be prevented from doing. If damages would be an adequate remedy for the Claimant, and the Defendant would be in a financial position to pay, then ordinarily no injunction should be granted. If, however, damages would not adequately compensate the Claimant for the pre-trial damage, and the Claimant is in a financial position to give a satisfactory undertaking as to damages, and also an award of damages would adequately compensate the Defendant in the event of the Defendant succeeding at trial, then an interim injunction may be granted. It is only where damages are inadequate on both sides that the Court proceeds to consider the balance of convenience. The factors informing the balance of convenience vary case by case**
>
> **43. The issue under balance of convenience is: "Which course carries the lower risk of injustice?". This because the court has to engage in trying to predict whether, and to what extent, the granting or withholding an injunction is likely to cause irremediable prejudice**
>
> **44. Where the interim injunction may be finally determinative of the matters in dispute between the parties, it is appropriate for the court to assess the likelihood of the Claimant succeeding when assessing the balance of convenience and to make "some sort of assessment" of the merits: see Lansing Linde Ltd v. Kerr [1991] 1 WLR 251,**
>
> **45. Where matters are evenly balanced, it is prudent to take such steps as are calculated to preserve the status quo.**

48. I am cognizant that the Applicant has not yet filed an application for leave to commence judicial review proceedings or was not yet granted leave to commence judicial review proceedings. As such, the full merits of the Applicant's case

regarding the purported attack on her judicial authority and independence and reputational harm are not before the Court. Whilst the issues of judicial authority and independence are serious in nature and sacrosanct for the administration of justice in The Bahamas, I am not satisfied that the Applicant has made out a case to warrant the grant of interim relief at this stage. This is particularly so, having regard to the test analysis I must employ on an application for interim injunctive relief and the filed affidavit evidence before the Court.

49. Given the weight of the complaints against the Applicant, it appeared to be appropriate for the decision to be made to place the Applicant on administrative leave during the investigation. The Applicant made no compliant about the leave at the time the Impugned Letters (save the one of 27 May 2026) were sent to her. She in fact fully participated in the process and provided detailed responses and explanations to the Commission in response to the complaints. She also attended a meeting before the Commission to make representations. On the face of the evidence before me, it appears to me, that no serious compliant can be made that the process was flawed.

50. I note that in the Judicial and Legal Service Commission Regulations, regulation 41, addresses proceedings for misconduct not warranting dismissal. This regulation however is applicable where disciplinary proceedings is instituted. In the instance case, such proceedings were not in fact instituted. The judicial officer is required to know the **"whole case"** and be afforded **"adequate opportunity of making his defence"**. On the facts, and particularly the contents of the Affidavit of Mr. Toote, it seems rather clear to me that the Applicant cannot mount a serious complaint that due process was not followed in her matter. I set out below regulation 41.

> **41. (1) Where a Head of Department, or the Permanent Secretary, as the case may be, considers it necessary to institute disciplinary proceedings against a judicial or legal officer and is of the opinion that the misconduct alleged is not serious enough to warrant dismissal, he shall investigate the matter in such manner as he thinks proper or he may request the Chairman to cause an investigation to be made; <u>in either case the officer shall be entitled to know the whole case against him and shall be given adequate opportunity of making his defence</u>.**

51. I also find favour with the Respondents' primary argument that the Commission had the right to place the Applicant on leave pending the investigation and that it was not a fundamental violation of the Applicant's rights. Reliance was placed on paragraph 15 of Lord Mance's decision in **<u>Panday v Judicial and Legal Service Commission [2008] UKPC 52</u>**:

> **[15] In so far as the first ground rested on a verbal distinction between the "temporary employment" for which the magistrate was engaged and "appointment proper" to which the Regulations could apply, the Board would not accept the reasoning (and in any event notes that no such distinction could be drawn in this case, where Mr Panday was given a "temporary appointment"). <u>Circumstances may arise in relation to temporary magistrates which could call for the operation of the disciplinary regulations. One example would be a suspected incident of corruption in the course of such a magistrate's duties, where this was the only suggested basis for termination of his appointment. But the temporary nature of an appointment permits removal for reasonable cause, of which the Commission is the judge</u>: Thomas v A-G of Trinidad and Tobago [1982] AC 113, 126H, [1981] 3 WLR 601, per Lord Diplock. <u>So it is open to the Commission, providing it follows a proper procedure, to form a view that the appointment should be brought to an end because of unsuitability for permanent appointment not involving any conclusion of misconduct</u>.**

52. Mrs. Moxey-Lockhart also strenuously chastised the letter of 27 May 2026 as amounting to a demotion or an unsolicited and non-consensual transfer to the Supreme Court. I quickly dismiss this argument because the appointment letter dated 29 July 2024 clearly notes that the Applicant is seconded to the "**<u>Office of the Judiciary (Supreme Court & Magistrate Courts)</u>**". The only possible meanings that can be given to the clear words in the letter are: (i) there was no intention for a permanent placement arising from the use of the word **secondment**; and (ii) the secondment was to the Judiciary, which in this instance is clearly defined as the Supreme Court and the Magistrate Courts. This naturally follows from the fact that the Applicant's substantive post is the Deputy Registrar of the Court of Appeal. The fact that she was placed as the acting Senior Magistrate does not diminish her secondment to the Office of the Judiciary. The complaint therefore that she was demoted or transferred from the Magistrate Court to the Supreme Court, without consent, appears to me, to be wholly unmeritorious.

53. While it may be possible to argue that the letter of 27 May 2026 is a revocation and/or a demotion, that letter on its face rescinds the initial transfer from the Magistrate's Court to the Supreme Court "**in your substantive capacity as Deputy Registrar**". I agree with Mrs. Moxey-Lockhart that the letter is not drafted with the strict elegance that it may be required given that it is intended to address the role to be served by the Applicant. That said, however, it in substance refers to her **substantive capacity**, which to my mind means that she is to remain in the same Scale JL12A and remain in the Office of the Judiciary. There can be no

dispute that the Supreme Court forms part of the Judiciary to which she was seconded.

54. Mrs. Moxey-Lockhart also made much of the words "**you be transferred**" in the letter of 27 May 2026. While the words may also be confusing, in context, they must mean transferred from the Magistrate's Court to the Supreme Court. The Registrar could have used the words posted or assigned; I think however, that the effect was to place her in the role of Deputy Registrar of the Supreme Court. As Mr. Adams KC advanced, it is a inter transfer, which seems to be correct. The fact that the placement was to the Supreme Court runs afoul of the suggestion of any larger transfer out of the Office of the Judiciary.

55. If I am wrong on that stage of the test (serious issue to be tried), I turn my mind to the other two stages, which requires me to conduct an analysis as to whether damages is an adequate remedy and the balance of convenience.

56. It is not unusual, and should not be altogether surprising, that unlike private law cases, in public law cases, damages will not generally be deemed as an adequate remedy in judicial review matters. There is no complaint or accusation on the facts before me that the Applicant stands to lose any benefits or be deprived of any financial privileges that came along with her secondment; or even the transfer. Mrs. Moxey-Lockhart at one point appeared to be arguing that the Applicant's entitlements were unknown because the letter of 27 May 2026 did not address them. I deem that to be a distinct and different issue. I fully agree though that while the letter of 27 May 2026 is silent as to the Applicant's salary scale, the contents of it, to me, seems to logically follow that the letter of 29 July 2024 is applicable. That is, her terms of secondment were not altered by the letter of 27 May 2026; but remain those set out in the letter of 29 July 2024.

57. Mrs. Moxey-Lockhart further argued that the Applicant can face reputational harm and damages. The factual basis for such claims appears to me to be absent from the papers before me. I see no basis for such allegations and in any event, they do not persuade me to conclude that interim relief is warranted. It therefore is my view that damages is adequate should the judicial review proceedings be favourable for the Applicant. Any reputational harm can be mitigated by an award of damages which the First Respondent Commission is capable of settling.

58. So far as the balance of convenience is concerned, to grant the relief is to restore the Applicant to the post of acting Senior Magistrate albeit on administrative leave. Mr. Adams KC argued that this would amount to a mandatory injunction and could have the unintended consequence of granting the relief that may be the subject of the judicial review proceedings. I fully agree with this argument.

59. I am guided in my assessment of the balance of convenience by the statements made by Mr. Justice Eyre in **R (on the application of Barstow and others) v Green Generation Energy Networks Cymru Ltd [2026] EWHC 889 (Admin)**. In

addressing the balance of convenience when a mandatory injunction is being sought, he said:

> **23. There was substantial but not complete agreement between the parties, as to the approach I ought to take as a matter of law. The approach to the grant or refusal of the interim injunction is that laid down in the case of American Cyanamid v Ethicon as modified to take account of the public law context and consideration. In particular, I am to have regard to the reluctance of the court to restrain a public body from exercising its powers in good faith. That is because of the assumed public interest in such bodies being able to do that.**
>
> **24. I have had regard to the decisions in R(Medical Justice) v Secretary of State for the Home Department [2010] EWHC 1425 (Admin) at [6] and [12]; to the summary of the applicable approach set out at by Lindblom LJ (as he then was) in R (on the application of the Governing Body of X) v Ofsted [2020] EWCA Civ 594 at [66]; and to R (RRR Manufacturing PTY Limited) v Medicines and Healthcare products Regulatory Agency [2024] EWCA Civ 530 at [54], [96], and [106].**
>
> **25. My understanding of the principles which flow from those authorities is as follows. <u>If a mandatory injunction is being sought the requirement that a strong prima facie case be shown is not just a relevant factor in the balance of convenience but is a threshold test.</u> <u>However, where, as here, the injunction sought is a restraining injunction then the first step is to consider whether a serious issue to be tried has been shown. That will be particularly relevant where interim relief is sought in judicial review proceedings before permission has been considered</u>. Here, permission has been given and Jefford J considered whether a serious issue with a real prospect of success had been shown. If that hurdle is crossed, the court has then to consider the adequacy of damages. In public law cases damages will rarely be an adequate remedy. That is because damages would rarely compensate a public body for not being able to give effect to its policies. In addition, the rule that there is generally no right to compensation for loss suffered by an administrative action means that damages are unlikely to be an adequate remedy for a claimant seeking a remedy. In very many cases, the right which the claimant seeks to**

vindicate is not capable of being assessed or properly recompensed financially.

26. It follows, that in public law cases, the assessment of the balance of convenience becomes an even more important exercise than in many other cases of interim relief. The court's reluctance to restrain a public body from exercising its powers in good faith is coupled with a general public interest in such bodies being able to carry out their policies. That means that the strength of the claim becomes a very significant factor. Accordingly, a party will generally need to show a strong prima facie case, to obtain interim relief restraining a public body exercising its powers in good faith. That, however, is not an invariable rule. The aim in public law cases, as elsewhere, is to take the course which creates the least risk of irremediable harm if it turns out at trial that a different view should have been taken by the judge determining matters at the interim stage. It is, nonetheless, still necessary to have regard to the strength of the case as part of the balance of convenience in a way this is not done in many other cases.

60. In my judgment the balance tilts in favour of maintaining the present status quo as at the filing of the application before me and not granting the interim injunctive relief. I am cognizant that the Court ought to be reluctant in restraining public bodies from carrying out their functions and policies in the general public interest, particularly, where there is no strong and sufficient evidence that such functions and policies were not carried out in good faith. However, I must stress that public bodies carrying out their functions and policies must exercise a modicum of responsibility whilst adhering to the principles of administrative and public law.

61. In considering the balance, I weighed the possible "harm" or "prejudice" that could ensue if I grant the relief sought. The fact that the administrative leave ceased as of 27 May 2026 as per the letter of that date raises valid questions of the benefits that will accrue to the Applicant by restoring the administrative leave, which I thought was also the basis of the Applicant's intended complaint in the intended judicial review proceedings. If that is indeed the case, the Court's discretional jurisdiction will be used to interfere in the administration of justice that is exclusively vested in the Commission under Article 117 of the Constitution in circumstances where there is no compelling evidence before me that the Commission did not act in good faith when it placed the Applicant on administrative leave during the investigation. Furthermore, there can be no real sustaining argument that the investigation was a 'witch hunt' given the seriousness of the complaints.

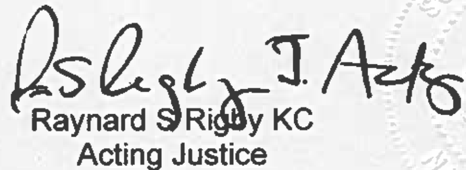
62. Considering all of the weighty factors, they in majority tilt towards the Respondents and therefore I would refuse the relief on the balance of convenience test.

63. Notwithstanding the matters and observations noted above, there are also additional considerations which I deem to be significant and weighty to justify the dismissal of the application for interim relief. Firstly, great weight must be accorded to matters of the public trust and confidence in the Judiciary and the administration of justice. The factual underpinnings of the various complaints against the Applicant are in fact serious matters. I do not need to assess or determine the legitimacy of the complaints or determine their validity at this stage, they will be the subject of the judicial review proceedings, but I am free to consider the contents of the letter of 1 June 2026 of the Chairman of the Commission which in part recognises that at least one of the complaints give pause for great concern for the administration of justice and the exercise of the powers of a judicial officer. Secondly, the administration of justice and the integrity of the Judiciary are important safeguards in a democratic society. These are cardinal virtues and therefore I weighed them in refusing the interim relief sought.

64. Thus, for all of the reasons set out above, I am not satisfied that it is appropriate to grant interim relief in this case. I do not consider that the claim as it currently stands meets the merits threshold and, although there may be issues arising which could not be compensated by damages, the balance of convenience in this case leans heavily, in my view, decisively against the grant of interim relief.

65. I therefore dismiss the application for interim relief and award costs occasioned by the application to the Respondents to be assessed if not agreed.

DATED the 30 day of June 2026



Raynard S Rigby KC
Acting Justice