

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Public Law Division

2021/PUB/jrv/00021

B E T W E E N

DARRYL ELMER BARTLETT

Applicant

AND

**BAHAMAS CIVIL AVIATION AUTHORITY (BCAA) COMMONWEALTH OF THE
BAHAMAS**

First Respondent

THE ATTORNEY GENERAL AND MINISTER OF LEGAL AFFAIRS

Second Respondent

Before: **The Honorable Madam Justice Carla Card-Stubbs**

Appearances: Mr. Bjorn R. Ferguson of BRF Chambers, Counsel for
the Applicant

Dr. David Whymys of the Office of the Attorney General, Counsel for the
Respondents

Hearing dates: July 11, 2024; October 4, 2024; March 24, 2025

Judicial Review - Decision not to renew or reissue airman's licence – Applicant having criminal conviction – whether Applicant a fit and proper person — Whether the decision was irrational — Whether the applicant had a statutory right to make representations prior to the refusal of the application — Section 21 Civil Aviation Act 2021 - Principles of natural justice.

HELD:

Decision quashed and remitted to the Director General for lawful reconsideration. Section 21(3) Civil Aviation Act 2021 provides a mandatory procedural safeguard. The Director General “shall disclose” prejudicial information and “give” the affected person a reasonable opportunity to make oral or written representations, unless disclosure ought not to occur in the public or national interest. Section 21(3) prescribes a notice-and-representations procedure. Nothing in those provisions creates an exception where the adverse material is already known to the applicant or is not factually disputed. The decision-maker must still provide the applicant with a reasonable opportunity to make written or oral representations before refusing renewal, even where the adverse material is an undisputed conviction already known to the applicant.

RULING

CARD-STUBBS, J

Introduction

- [1.] On August 25, 2026, this Court delivered its decision with reasons to follow. This judgment/ruling sets out the decision as well as the reasons for the decision.
- [2.] This is the Court's judgment on an application for judicial review brought by Mr. Darryl Elmer Bartlett in respect of the decision of the Director General of the Bahamas Civil Aviation Authority (“BCAA”) dated March 24, 2021 refusing his application for renewal of his Bahamian Airman's Licence.
- [3.] The Applicant contends that the refusal was unlawful on grounds of illegality, irrationality, procedural impropriety and breach of natural justice. The Respondents resist the application and contend that the decision was lawfully made under the Civil Aviation Act 2021, that the Applicant did not satisfy the statutory fit and proper person criteria, that the decision-making process was fair, and that an alternative statutory appeal remedy was, or remained, available.
- [4.] Before turning to the issues for determination, the Court wishes to record its regret and to apologise to the parties for the delay in the delivery of this judgment.
- [5.] For the reasons which follow, I find that the Respondent failed to observe the statutory procedure under section 21(3) Civil Aviation Act 2021 and, as a result, the March 24, 2021

decision of the Director General of the Bahamas Civil Aviation Authority is quashed and the matter is remitted to the Civil Aviation Authority - Bahamas for reconsideration.

Background

[6.] On November 01, 2021, the Applicant filed an Originating Motion initiating his application for Judicial Review. The Applicant had previously been granted leave to pursue judicial review proceedings and had successfully resisted an application to have that leave set aside.

[7.] By Originating Notice of Motion, the Applicant seeks, among other remedies, an order of certiorari quashing the decision of March 24, 2021; an order of mandamus compelling the Director General to comply with sections 20, 21 and 22 of the Civil Aviation Act 2021; declarations that the refusal was unreasonable, illegal, irrational, procedurally improper and contrary to natural justice; damages; costs; and such further relief as the Court deems just.

[8.] The Originating Motion sets out the grounds as follows:

Illegality

1. The Director General decision [sic] under the employment and control of the First Respondent based his decision under section 20 (2) (b) and under section 21(1)(f) of the Civil Aviation Act 2021 (CAA 2021) when considering that the applicant was not a "fit and proper person".
2. On the basis of this ground, the First Respondent failed to comply with section 21(3) CAA 2021 when considering whether the Applicant is a fit and proper person. In that he failed to give the Applicant a "reasonable opportunity to make a written or oral representation" and hence failed to consider the law which governs his duties when exercising his decision-making powers.

Irrationality

3. The decision of the Director General to deny the Applicant's renewal application can be considered as outrageous in its defiance of logic or of accepted moral standards.
4. The Director General under the employment and control of the First Respondent relied solely on section 22 (2)(c) to disqualify the Applicant's application for renewal. The Director General in his capacity should have considered all the requirements listed in section 22, CAA 2021. Notwithstanding the fact that the Applicant satisfies the requirements which grants the renewal of his application as listed in section 22, CAA 2021.
5. The Applicant displays that he is certified, competent and an experienced pilot. Therefore, the antecedents in which the Applicant possess should not

disqualify him from his career, particularly because he has already paid his debt to society.

6. In addition, the Director General placed great reliance on the National Civil Aviation Security Program, which does not override the CAA 2021 and natural justice.

Procedural impropriety

7. The First Respondent failed to act with procedural fairness when handling the making of his decision. The Director General failed to consider all the requirements which are expressly laid out sections 20, 21 and 22 of the CAA 2021 by which this jurisdiction is conferred. Instead, the Director General focused heavily on part of sections 20, and 21 of the CAA 2021 without factoring in the requirements laid down in sections 22 of the CAA 2021 in the granting and renewing of aviation documents. Although the Applicant meets all the requirements laid down under the said provisions.

Natural Justice

8. That the First Respondent failed to observe the basic rules of natural justice when deciding to deny the Applicant's application for renewal.
9. The Applicant are entitled to the reliefs sought therein.

[9.] The Originating Motion is supported by the Affidavit of Darryl Bartlett, Applicant, filed on June 29, 2021. The Applicant alleges that he is a certified pilot, that his licence expired and that he made an application for renewal which was refused. His case is that “the basis upon which the denial was made is illegal, unreasonable, and irrational.” Mr. Bartlett avers, in part:

4. That I am a certified Pilot having received my Pilot Certificate in or about October 1995 from Alabama Aviation and Technical College.
5. That in or about June, 2001 I obtained my Bahamian Airman License [Flight Crew Member].
6. That in or about May, 2015 my Bahamian Airman License [Flight Crew Member] had expired.
7. That on 24th February, 2015 I was convicted in the Magistrates Court for drug related offences and I was sentenced to 5 years' imprisonment, which I served.
8. That on or about 12th December, 2019 I applied to The Bahamas Civil Aviation Authority (BCAA), the First Respondent herein for a renewal of an Original Airman License [Flight Crew Member].
9. That due to the delay and length of time without a response I spoke with a Daxton Bethel in the License Department relative to the renewal of my Original Airman License [Flight Crew Member].
10. That in or about October, 2020 I communicated through numerous emails between Michael F. L. Allen, the Director General of the First Respondent who confirmed receipt of my application and advised that same was being processed

11. That by the 22nd December, 2020 I still had not received a response relative to my applications and emails sent between the Director General of the First Respondent and myself. I therefore emailed him on this date, 22nd December 2020 and sent another email to him on the 6th January 2021, advising him that it has been a year since I have applied for a renewal and was inquiring about the status of same. However, on that date I received no response to the said emails.
12. That on the 28th January, 2021 I received an email from the said Director General of the First Respondent advising me that Ms. Kimberley Minors had made him aware of my queries and that they were continuing to review my matter and would revert to me soon as a determination was made. Subsequently, on this date, I responded to his said email advising that it had been a year since I made my said application and I inquired as to how much longer should I wait. Thereafter, the said Director General replied advising me that my application was: "worthy of both serious and thorough consideration, to be dealt with in the public interest having regard to all the circumstances of case and that the matter is being given appropriate attention".
13. That in or about February, 2021, I sought legal counsel and my attorney Mr. Bjorn R. Ferguson of BRF Chambers wrote to the said Director General of the First Respondent on the 9th February, 2021 inquiring about the status of my application. A copy of the said letter and service sheet evidencing receipt of the same are now produced and shown to me and exhibited hereto as "DEB-1" and "DEB-2".
14. That I am informed by my said attorneys and I verily believe that on the 9th February, 2021 confirmation emails from the said Director General and Donald D. Bartlett, Director of Operations of the First Respondent herein advising my said attorneys that they were in receipt of the said letter. Copies of the said emails are now produced and shown to me and exhibited hereto as "DEB-3" and "DEB-4".
15. That on the 16th March 2021, I made an application for leave to apply for Judicial Review against First Respondent in which I sought an order for Mandamus, mandating the First Respondent herein to grant me an Airman License [Flight Crew Member] and/or consider the same.
16. That on the same day aforementioned, when the said Judicial review application was filed, the First Respondent informed me that my application for the renewal of the Airman's license [Flight Crew Member] was denied. In addition, on the 24th March, 2021, the First Respondent then sent out a response to me via letter through email denying the renewal of my application renewal application exhibited hereto as "DEB5"
17. That the basis upon which the denial was made is illegal, unreasonable, and irrational.

18. That I am a father of 2 children and this unreasonable delay by the First Respondent is causing me undue hardship and economic loss.
19. That my application to the First Respondent for renewal of an Original Airman License [Flight Crew Member] was not considered in compliance with the Civil Aviation Act 2021.
20. That because my application for renewal of my Airman's License [Flight Crew Member] was denied, I have been disqualified from Piloting and have not been able to earn a living by use of my craft and professional training.
21. That I had a legitimate expectation that the First Respondent would consider my application in a timely and lawful manner.
22. That I attempted to file a statutory appeal but was told that it does not apply to my situation.

[10.] The Respondents relied on the evidence of Alexander B. Ferguson. Mr. Ferguson gave evidence in the capacity of Acting Director General of the former BCAA now to be referred to as the Civil Aviation Authority Bahamas (CAA-B). His evidence records the nature of the conviction of the Applicant on several counts and how the Applicant came to be sentenced to 5 years in prison. His evidence is that the Applicant was arrested when he flew a plane into New Providence from Canada and that the plane was searched by police and found to contain drugs. His evidence is that while the case was pending before the court, the Acting Registrar of the Court advised his offices that the Applicant had to surrender his pilot licence as a condition of bail and requested that another not be issued until “approval is otherwise given from the court.”

[11.] Mr. Ferguson’s evidence is that the Applicant was convicted on several counts and sentenced to two years and six months on each count, sentences to run concurrently. The Applicant appealed his conviction and the Court of Appeal increased the sentence to 5 years on each count, sentences to run concurrently. Those details are absent from the affidavit of the Applicant which nonetheless admits of a conviction for drug offences and a 5 year sentence.

[12.] Mr. Ferguson’s evidence is also that Mr. Bartlett was released from the Bahamas Department of Corrections on November 22, 2019. It is common ground that on December 12, 2019 Mr. Bartlett applied for the renewal of his Bahamian Airman’s Licence.

[13.] Mr. Ferguson avers that on receipt of Mr. Bartlett’s application for a renewal of his licence, a back ground check was conducted and that this took some time.

[14.] Mr. Ferguson confirms the decision to deny the Application and the decision is exhibited at Paragraph 17 thus:

17. On that same date, unaware of the court's ex parte decision, the then DG wrote to the Applicant advising him that his application was denied due to not satisfying the "fit and proper person criteria as a requirement for the grant of an aviation document outlined in section 21 of the Civil Aviation Act 2021 ("CAA 2021"). There is now produced and shown to me marked as "Exhibit ABF6" a copy of the decision of the DG.

[15.] Mr. Ferguson also addresses, in his affidavit, matters touching the grounds of the Application. He avers at paragraphs 25 to 37 as follows:

Was the delay in making the decision to grant or revoke the application unreasonable or an abuse of power?

25. Considering the circumstances of the case which required significant background and other security checks and the myriad of matters facing the CAA-B between 2019 and 2021, including addressing the effects of Hurricane Dorian, the emergence of Covid 19, the change in DG and the coming into force of new Aviation Legislation, I am of the view that while the 15-month delay was prolonged, it was not unreasonable or an abuse of power in this situation.
26. Furthermore, based on the fact that communication was had between the Applicant and both former DG's Capt. Beneby and Mr. Allen relative to this matter in which they indicated that the matter was being considered, it reflects that they delay was not one of wasted time but of due and rigorous consideration.

a. Was the decision of the CAA-B illegal, irrational or procedurally improper?

27. Seeing that it is a function of the CAA-B to issue, renew or revoke licences pursuant to Section 4(d) of the Civil Aviation Authority Bahamas Act 2021 ("CAA-B Act 2021") and a power of the DG under Section 16(1)(c) of the CAA-B Act 2021, it is not illegal for the Authority through the Director General to deny the renewal or grant of an Airman Licence. There is now produced and shown to me marked as "Exhibit ABF10" a copy of the Civil Aviation Authority Bahamas Act 2021.
28. Furthermore, as it is a requirement for the grant of an Airman Licence that the applicant be considered a fit and proper person (Section 22(2)(c) Civil Aviation Act 2021 ("CAA 2021")) and in determining if an applicant is a fit and proper person the DG shall consider whether the person has any convictions (Section 21 (1)(f) CAA 2021), it would not be irrational for the Director General to consider The Applicant's conviction for drug trafficking offenses via aircraft in making his decision to deny his application for an

Airman Licence. There is now produced and shown to me marked as "Exhibit ABF11" a copy of the Civil Aviation Act 2021.

a. Was the Applicant denied access to Natural Justice?

29. I am not of the view that the Applicant was denied access to Natural Justice in this case. the Applicant has never been denied an opportunity to make oral or written presentations to the Authority in appeal of its decision. In fact, in the Director General's letter, dated 3rd June 2021, in response to an appeal that the Applicant launched, he indicated that the Applicant has appealed under the wrong provisions of the Act and if he wished to continue with his appeal, he should review his position and lodge an appropriate appeal for consideration.
30. Furthermore, the Applicant was again invited to pursue his appeal under the appropriate provisions of the Act before commencing court proceedings by letter from the Deputy Legal Counsel dated July 15, 2021.

a. Full and Frank Disclosure

31. The Applicant in his Affidavit in Support of Leave to Apply for Judicial Review filed June 29th, 2021, merely informed the Court at paragraph 22 that "he attempted to file a statutory appeal but was told it does not apply to his situation". This is not the position that was advanced to the Applicant as evidenced by Exhibits "ABF 8" & "ABF 9"
32. Furthermore, at paragraph 7 of his Affidavit, the Applicant merely states that he was convicted for drug related offenses in the Magistrates court and was sentenced to five years. When in actuality, he was convicted for the numerous offenses listed in paragraph 4 above which were a result of him piloting an aircraft transporting a large amount of narcotics. He was sentenced to 2.5 years in the Magistrates court which determined unduly lenient based on the amount of drugs and his involvement in the matter and was increased to 5 years on appeal at the Court of Appeal.
33. That it was the duty of the Applicant to advise the Court of all facts relevant for its determination during an ex-parte hearing for Leave to Apply for Judicial Review.
34. The First and Second Respondents aver that the Applicant failed to advise the Court that on 3rd June and 15th July 2021 he was advised in writing by the CAAB's DG and Legal Counsel that his appeal was brought pursuant to the wrong provisions of the Civil Aviation Act 2021 and invited to re-appeal pursuant to the appropriate provisions.
35. The First and Second Respondents further aver that the Applicant failed to advise the Court that on 7th April, 2014 he along with others were arrested when a plane flown by the Applicant into New Providence from Canada was searched by police and found to contain 149 pounds of Indian Hemp and 17.4 pounds of amphetamines.

a. Alternative Remedy

36. As aforementioned, the Applicant was invited to re-appeal under the correct provisions of the CAA 2021 and that invitation remains open to him.
37. Consequently, the Applicant still has an alternative remedy that he must avail himself of before seeking to pursue Judicial Review.

SUBMISSIONS OF THE PARTIES

[16.] In this matter, the facts are largely agreed as to the circumstances leading to the decision and the nature of the decision.

Applicant's Submissions

[17.] The Applicant argues that the Respondents are in breach of his statutory right to be heard under section 21(3) of the Civil Aviation Act 2021, as well as illegality, irrationality and procedural impropriety. He argues that the conviction information was prejudicial to the renewal application and was not disclosed to the Applicant by the First Respondent and that he had a right to be heard before an adverse decision was reached. The Applicant submits that failure to comply with section 21(3) invalidated the decision. The Applicant also submits that the delay in determining the application was unreasonable and procedurally improper.

Respondents' Submissions

[18.] The Respondents argue that the refusal to renew the Applicant's licence complied with the governing Civil Aviation Act 2021 and related fit and proper person criteria. The Respondents contend that background facts included the Applicant's drug-related conviction, increased sentence to five years imprisonment, release in 2019 and that the Director General was correct to take these matters into account. The Respondents contend that the roughly 15-month delay was not unreasonable and that, the Applicant had opportunities to make representations by way of appeal. The Respondents submit that the judicial review claim should be dismissed because the decision was neither illegal, procedurally improper, irrational, nor contrary to natural justice.

ISSUES

[19.] I note that at the close of his case, the Applicant relied on a morph of three of his grounds (illegality, procedural impropriety and breach of natural justice) which together related to whether the Applicant's statutory right to be heard was breached under section 21 (3) of the Civil Aviation Act 2021. I will deal with the other issues raised very succinctly.

[20.] The issues to be determined in this instance are:

- 1) What was the legal character of the impugned decision and what statutory framework governed it?
- 2) Whether the decision-maker took into account irrelevant considerations, failed to take into account relevant considerations, or otherwise acted irrationally.
- 3) Whether the refusal process was unlawful by reason of breach of natural justice or procedural fairness.
- 4) Whether the decision is illegal because of bias.
- 5) Whether the administrative delay amounted to a procedural impropriety.
- 6) Whether the claim is affected by the existence of an alternative statutory remedy and the Applicant's failure properly to pursue it.
- 7) Whether, if any public law wrong were established, the Applicant would be entitled to damages.

The nature of Judicial Review

[21.] Judicial review invokes the supervisory jurisdiction of the court. The court does not sit as an appellate body to review the correctness or merits of a decision. The Respondents rely on the guidance notes to Part 54.1 as appear in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024 and which provides the following:

Judicial review is concerned "with the legality rather than the merits of the decision, with the jurisdiction of the decision-maker and the fairness of the decision-making process rather than whether the decision was correct.": *Kemper Reinsurance Co. v Minister of Finance [2000] 1 A.C. 1 at 14.*

[22.] I accept that extract as an accurate representation of the nature of Judicial Review.

[23.] The Court's task, being concerned with the legality of the decision, is to review whether the decision-maker acted within the remits of the law. Therefore, in this case, this Court does not sit as the primary licensing authority and does not simply substitute its own view for that of the statutory decision-maker. Where the law entrusts to a regulator an evaluative judgment, such as, for example, whether an applicant is a fit and proper person to hold an aviation licence, the Court's task is to determine whether the decision-maker acted within the statute, applied the correct legal principles, took account of relevant matters, excluded irrelevant ones, and acted fairly.

Issue 1: What was the legal character of the impugned decision and what statutory framework governed it?

[24.] It is useful to determine the source of the statutory power under consideration.

[25.] The power to grant, refuse, renew, suspend, vary, revoke, or otherwise regulate aviation documents must be exercised in accordance with the Civil Aviation Act 2021. The parties rely on sections 20, 21 and 22 of the Civil Aviation Act 2021.

[26.] Sections 20 to 22 of the Civil Aviation Act 2021 set out the requirements and procedures for obtaining, renewing, and holding aviation documents in The Bahamas. Section 20 provides for the ‘Requirements for an Aviation Document’ and specifies a wide range of aviation-related activities for which an aviation document is required, including for airmen. Anyone wishing to engage in these activities must apply for approval, meet the criteria for being a ‘fit and proper person’, possess the necessary experience and qualifications, and comply with all relevant laws and conditions. Section 22 makes provisions for the ‘Grant and Renewal of Aviation Documents’. Applications for aviation documents must be made in the prescribed form with all required information. The Authority may grant or renew a document if the applicant (or controlling persons) has the necessary qualifications, is fit and proper, meets all requirements, and the approval is not contrary to aviation safety. The Authority may impose conditions on the document, and applicants can object to refusals.

[27.] Section 21 sets out the ‘Criteria for Fit and Proper Person’. That section outlines the factors the Director General must consider in order to determine if an applicant is “fit and proper”. These are factors such as compliance history, experience, knowledge of regulations, medical certificates, health and behavior, criminal convictions, any aviation safety offenses and any other relevant information.

The impugned decision

[28.] I accept that, in substance, the impugned decision was a refusal to renew or reissue an Airman Licence. The Applicant’s licence had expired in or about May 2015, and his application in December 2019 was one seeking to restore his licensed status. The relevant parts of the decision communicated to the Applicant reads as follows:

...I note that material on record within the Authority indicates that there are court convictions associated with the application. In order to respond appropriately to this matter, a certain level of inquiry beyond Authority regulations was required and has been necessary for the Authority to consider all the circumstances of this case, the interests of aviation stakeholders and in the public interest.

It must be noted that the Civil Aviation Authority Bahamas (CAA-B) is responsible for maintaining a National Civil Aviation Security Program (NCASP). The Program provides that no person may be issued an airport pass providing unescorted access to security restricted areas if they have not passed a background check performed by the Royal Bahamas Police Force, or if they have been convicted of any of the offenses enumerated in a list of pieces of legislation provided by the NCASP or of an equivalent law of another State. The list includes the Penal Code Chapter 84 (an Act to establish a code of crimes punishable on indictment and of certain similar and other offences punishable on summary conviction). It also includes a reference to the Dangerous Drugs Act Chapter 228.

Additionally, it should be observed that the CAA-B not only is required to maintain the NCASP, but also is the regulator of the Airport Authority. The Airport Authority is required by the CAA-B to ensure that it complies with security guidelines which govern its operations. Those guidelines contain a similar list of disqualifying offenses.

As a further consideration, I do also draw attention to the fact that Sections 20 and 21 of the Civil Aviation Act, 2021 imposes "a fit and proper person" test which must be satisfied in order for a person to be able to engage in an activity relative to an Aviation Document. Section 21 identifies criteria for determining the position. The criteria include any convictions prior to or after the commencement of the Act, whether in The Bahamas or any other jurisdiction. I note that these considerations are in connection with standards for participating at certain levels within the aviation industry.

Accordingly, having regard to the fact that conviction and prison sentence attends this application, the CAA-B in accordance with the Civil Aviation Act, 2021, the national aviation security guidelines and Airport Authority security requirements, is not able to accede to the request for the reissuance of an Airline Transport Pilot Licence in this case.

[29.] From the contents of the letter, it can be discerned that the First Respondent considered several factors in coming to its decision. The denial of Captain Darryl Elmer Bartlett's request for renewal of his airman (pilot) license was said to be based on the following reasons:

1. Criminal Convictions: There are court convictions and a prison sentence associated with Captain Bartlett's application, which are disqualifying factors.

2. **National Civil Aviation Security Program (NCASP) Requirements:** The NCASP prohibits issuing airport passes for unescorted access to individuals who have not passed a background check or who have been convicted of offenses under specific laws (such as the Penal Code Chapter 84 and Dangerous Drugs Act Chapter 228) or equivalent foreign laws.
3. **Airport Authority Security Guidelines:** The Airport Authority, regulated by the Civil Aviation Authority Bahamas (CAA-B), must comply with similar security guidelines that list disqualifying offenses.
4. **'Fit and Proper Person' Test:** The Civil Aviation Act 2021, requires applicants to meet a 'fit and proper person' standard, which includes consideration of any convictions in The Bahamas or elsewhere.

Taking those factors into account, the Authority/CAA-B determined that the Applicant, Captain Bartlett, did not meet the regulatory and security requirements for license renewal.

Issue 2: Whether the decision-maker took into account irrelevant considerations, failed to take into account relevant considerations, or otherwise acted irrationally.

[30.] A decision may be impugned in public law if the decision-maker took into account matters that were irrelevant, failed to consider matters that were relevant, asked the wrong question, or reached a conclusion outside the range of decisions reasonably open to it.

[31.] The classical test of irrationality or unreasonableness comes from **Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223**, as cited by Lord Diplock in **Council of Civil Service Unions and others and Minister for The Civil Service. In Associated Provincial Picture Houses Ltd v Wednesbury Corporation** unreasonableness was defined as where a decision on review is “so unreasonable that no reasonable authority could have reached it”. In that case, Lord Greene MR formulated a 2-limb test at pages 233-234:

The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere.

[32.] The law lord also explained that reasonableness included having regard to relevant matters and disregarding matters at page 229:

It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting "unreasonably." Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington L.J. in *Short v. Poole Corporation* (1) gave the example of the red-haired teacher, dismissed because she had red hair. That is unreasonable in one sense. In another sense it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.

Airport Access, NCASP regulations, Airport Authority Security Guidelines

[33.] In this case, the Applicant submits that the BCAA took into account irrelevant matters by relying on the NCASP and airport-security considerations which, he says, concerned airport-pass access rather than licence renewal. His *viva voce* evidence was:

A. During my career as a Pilot and having renewed my license several times the standard period is up to two weeks.

Q. You also made reference to the NCASP and the Civil Aviation Authority. What do you mean by there being no relevance or correlation between the two?

A. In the letter stated by Mr. Allen, he states the NCASP and the steps they take go towards granting of a airport access badge, which I had no intent or was trying to apply for. I was just trying to deal with the Airman's License which is totally up to the Civil Aviation Authority Board of The Bahamas.

Q. My learned friend spent a lot of time asking you about having to go through a particular terminals to access an aircraft, is that in fact so as a Pilot?

A. Yes.

Q. Would you have to go through a terminal to get to your aircraft?

A. Essentially not to the terminals, but through the facility. There certain access points at the facility.

Q. Okay. And would that require you have to have an NCASP --

A. No.

Q. And where would those areas be?

A. Like Jet Nassau, Odyssey Aviation, General Aviation Center, private terminals.

Q. Okay. And are you a private Pilot?

A. Yes, I am.

Q. How many airports are there in the Commonwealth of The Bahamas?

A. Numerous

Q. As a Pilot are you able to access all of those airports?

A. Once I have a aircraft on the terminal, yes. I have to access my aircraft which is at the airport so in essence, yes I must be granted access to the airport.

Q. And my next question is, all of those airports that you indicate are they mand with individuals who check?

A. No, no.

Q. And for your experience you're a very experience, what is the purpose of licensing, what is the purpose?

A. I guess just to ensure that you are up to part, up to standard as to the function that you would be performing. That you are qualified to carry out certain functions such as Piloting an aircraft.

Q. Okay. To your mind that is the purposing of licensing?

A. Yes. Or I'll say, you have demonstrated certain criteria and met a certain performance standard so that you can exercise certain privileges.

[34.] The evidence of the Applicant is that, as a pilot, he has had unrestricted access to the airports. On the basis of “familiarity”, he comes and goes as he pleases. His *viva voce* evidence was:

THE COURT: Going back to a question that Counsel for the defense asked, and your Counsel revisited. Tell me how is it that your able to access

an airport without any identification? Is that your evidence, I'm not sure that I understand.

THE WITNESS: It's standard practice, ma'am.

THE COURT: Yes.

THE WITNESS: If you're a pilot you own aircraft or you're piloting a aircraft.

THE COURT: How would they know that you own a aircraft and that you're a Pilot?

THE WITNESS: For familiarity, but in essence there not there is no person -- they do have security at the checkpoints, but they're not there for the purpose to verify that you are in possession of a Pilot license.

THE COURT: So if I understand your answer you said familiarity. So if they know that you are a Pilot and you have a aircraft they would allow you access?

THE WITNESS: Yes, ma'am.

THE COURT: Anything on that Mr. Ferguson?

MR. FERGUSON: Repeat the last question, my Lady. Your last question you asked.

THE COURT: So for clarity, it's whether they know you're a Pilot and you have a access there, you have a aircraft there they will allow you access and the answer was yes. He said based on familiarity. The original was, why would they allow you access without an id?

MR. FERGUSON: Nothing, my Lady.

THE WITNESS: To clarify it for you more. We have Private Pilots flying in everyday from America other points. They don't possess an id and their granted access to their aircraft.

THE COURT: You mean they leave the airport and are able to return?

THE WITNESS: Definitely, yeah. That's what I'm saying. I fly from New York and land at the park by FBO. I go to hotel spend the week leave and I come back board my aircraft and depart.

THE COURT: Thank you.

Mr. Ferguson.

RE-RE EXAMINATION BY MR. FERGUSON:

Q. And you indicated a Private Pilot. How big is that industry -- private?

A. Very big industry.

THE COURT: Yes.

Dr. Whyms.

MR. WHYMS: Yes, my Lady.

RE-RE EXAMINATION BY MR. WHYMS:

Q. So in relation to the question of the Court asked Mr. Bartlett. So Mr. Bartlett, are you saying that the Private Pilot's there's really no checks and balance as for security in relation to how when and

where pilots would access a private plane?

A. No, there is security manning the

Q. No, Mr. Bartlett --

MR. FERGUSON: My Lady --

THE WITNESS: Can I clarify?

THE COURT: Stop please, Mr. Bartlett.

Counsel ask your question in stages. You asked three different things and you suggested to him that's what his answer meant. May I ask you to break down your question?

MR. WHYMS: I'm guided, my Lady.

THE COURT: Go ahead.

And Mr. Bartlett you will respond when Counsel is finished with his question.

THE WITNESS: Yes, ma'am.

THE COURT: Go ahead Dr. Whyms.

MR. WHYMS: Thank you, my Lady.

BY MR. WHYMS:

Q. Mr. Bartlett. I asked in relation to the question that the Court asked about familiarity -- well, in response to your statement about familiarity as far as being granted access to your claim. Is there no checks and balances in relation to how when and where a Pilot would be able to access his plane?

A. Checks and balances? No, sir.

Q. No checks and balances?

A. I could only -- you want me to clarify?

Q. Please.

A. There are Security Officers stationed at the airports -- at the private terminals. Now their function is to maintain peace and order and to be vigilant for anything unto all. Now it's not their job to pull me over, let me see your Pilots License, that is not their function. So if you're asking me if there is someone who stands

to the door and says, show me your private license, no, sir that does not exist.

Q. So Mr. Bartlett you said, it is standard practice as far as familiarity? So when there are there is a security officer who is not familiar with Darryl Bartlett a Pilot attempting to gain access to a private plane there's nothing to be said about that?

A. I have never encounter that. I could imagine sir that the Security Office has a right to maybe ask to see if a document is presented, but I can't speak to any personal experience.

Q. Okay. Fair enough, I accept that question they have a right to do so, okay.

[35.] Mr. Bartlett's evidence is that his pilot licence does not give him access but that he needs a licence in order to operate his plane. It seems to me that the Applicant is given access because the security guards recognize him as a pilot. Unless he were a pilot accessing his plane, there would be no reason for them to become familiar with him. There is no evidence that just any member of the public can, at will, transit the airports and access private aircrafts. Therefore, the argument that consideration of access to the airport is an irrelevant consideration in this instance is an unconvincing argument. Airport access touches on relevant concerns of aviation safety and security and of fitness of a person to enjoy the privilege of, in his case, unchecked access through the airport.

[36.] The concept of fitness and propriety in an aviation regulatory setting is not artificially narrow. It is capable of encompassing security-related considerations that bear upon whether a person should be entrusted with the privileges and responsibilities associated with an Airman Licence.

[37.] In my opinion, even if some of the materials relied upon by the First Respondent may also be relevant in the context of airport access, that does not mean they were legally irrelevant to the broader inquiry as to whether the Applicant was fit and proper, viewed through the lens of aviation safety and security. Section 22 specifically provides that the Authority may grant the approval of the aviation document if it is satisfied that "the approval of such application will not in the opinion of the Authority be contrary to the interests of aviation safety."

[38.] The National Civil Aviation Security Program (NCASP) Requirements and the Airport Authority Security Guidelines are also matters that fall within the rubric of interests of aviation safety (section 22 (2)(e) and relevant material (section 21(1)(h)). It was not disputed by the Applicant that those requirements and guidelines touch and concern aviation safety. To my mind, such requirements and guidelines are all part and parcel of the factors and considerations that the Director General is entitled to take into account in evaluating and determining each application.

Fit and Proper Person criteria

[39.] The Applicant also submits that the Director General "relied solely on section 22(2)(c) to disqualify the Applicant's application for renewal" and that the Applicant "displays that he is certified, competent and an experienced pilot".

[40.] Section 22(2)(c) provides:

22. Grant and renewal of aviation documents.

- (1) Every application for the grant or renewal of an aviation document required under this Act shall be made to the Authority in the prescribed form and accompanied by such information specified therein or such other information as may be further required by the Authority.
- (2) The Authority may, having considered an application made pursuant to subsection (1), grant the approval of an application for an aviation document or the renewal thereof if the Authority is satisfied that –

(c) the applicant is a fit and proper person;

[41.] Section 22(c) specifically provides that the Authority may grant the approval of an aviation document if it is satisfied that “the applicant is a fit and proper person.” Therefore the Authority is well within its remit to refuse an application if it determines that an applicant is not a fit and proper person. At the same time, the authority must ask the right statutory question. In this case, it must determine whether the Applicant is fit and proper under the Act. It must not proceed upon an unlawful presumption that conviction alone inevitably disqualifies the applicant unless the statute so provides. Section 21, as noted above, supplies the criteria for a fit and proper person.

[42.] ‘Fit and proper’, to my mind, is not a competence assessment as suggested by the Applicant. A requirement that an applicant be fit and proper plainly permits the decision-maker to consider matters bearing on safety, security, trustworthiness, regulatory compliance, and the public interest. Serious criminal convictions, particularly where connected to aviation activity or security implications, are capable of being highly relevant considerations.

[43.] The Applicant’s further argument, as I understand it, is not that the Authority was forbidden from considering his conviction but rather that the Authority either ascribed too much weight to it or treated it as determinative or used it through an unfair process.

[44.] The Applicant’s conviction was plainly a matter the Authority was entitled to consider. Indeed, it would have been surprising if the Authority had ignored it. Considering the evidence before me, I am not persuaded that the Authority treated the conviction as an automatic disqualification. The reasons for the refusal as transmitted in the March 24, 2021 decision and given in the evidence of Mr. Ferguson was that several matters were taken into account - broader matters of background checks, public interest, security, and the statutory fit and proper test. That evidence was not challenged.

[45.] The evidence suggests that the Authority did not act as if the conviction were an automatic bar but that, instead, it was part of an evaluative judgment. In this case, the conviction was not some peripheral matter. It was of a serious kind. The evidence also is that the Respondent considered the circumstances attending the conviction and on related security concerns. Those were, in principle, matters capable of bearing on whether the Applicant was fit and proper to hold an Airman Licence.

[46.] I also consider that the application was under active consideration over a significant period and that the Applicant had been in correspondence with the Authority. While that did not amount to a formal invitation to make representations in the manner the Applicant submits was required, it does, to my mind, demonstrate that the Authority did not treat the fact of conviction as a determinative factor.

Conclusion

[47.] On this issue, I am not satisfied that the Authority took into account irrelevant considerations in determining Mr. Bartlett's application. The threshold for irrationality is high. It is not the Court's function to determine whether a different decision-maker might have taken a different view of the significance of the Applicant's conviction. The Court's role in judicial review is not to substitute its own view on the merits of the licensing decision. That distinction is fundamental: **Council of Civil Service Unions v Minister for the Civil Service**. On the evidence before me, a conclusion that a person with the Applicant's conviction history and the attendant security concerns was not fit and proper to be granted renewal or reissue of an Airman Licence, was plainly a conclusion open to the Authority.

[48.] I therefore conclude that the refusal was not irrational or unreasonable in the public law sense.

Issue 3: Whether the refusal process was unlawful by reason of breach of natural justice or procedural fairness.

[49.] Breach of natural justice is a form of 'procedural impropriety' as laid out in Lord Diplock's categorisation of heads of judicial review in **Council of Civil Service Unions and others and Minister for The Civil Service [1985] A.C. 374**, a case relied on by both parties. Lord Diplock opined at page 410:

I have described the third head as "procedural impropriety" rather than failure to observe basic rules of natural justice or failure to act with procedural fairness towards the person who will be affected by the decision. This is because susceptibility to judicial review under this head covers also failure by an administrative tribunal to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any denial of natural justice.

[50.] **Council of Civil Service Unions and others and Minister for The Civil Service** considers that procedural impropriety includes, and is wider than, "natural justice" and procedural fairness. That case also recognises legitimate expectation as one manifestation of fairness.

[51.] At common law, one of the recognized rules of natural justice is *audi alteram partem* ('hear the other side'). One goal is to ensure a fair result from a fair procedure. Fairness ordinarily requires that a person affected by an adverse decision be given a meaningful opportunity to answer the substance of the case against him. The intention is that a person affected by a decision should be given enough indication of the adverse case to make the opportunity to respond a real one. The common law rule is sometimes reflected in procedural requirements imposed by statutes. The ordinary principles governing statutory interpretation require the Court to give effect to clear statutory language. Where a statute prescribes a procedure before an adverse licensing decision is taken, the question for the court is one of compliance with the statute. In such a case, common law fairness remains relevant, but it supplements rather than displaces a clear legislative provision.

[52.] The Applicant submits that:

"the information of the Claimant's drug conviction was in fact prejudicial to him and his application which was being considered/processed before the First Respondent. The ordinary meaning of the word prejudicial: is harmful to someone or something, and/or detrimental. It is also our submission that this then required the Director General to disclose the information to the Claimant and give the Claimant a reasonable opportunity to make written or oral representation, either by himself or some other person, unless the information ought not to be disclosed in the public or national interest."

[53.] The Applicant's evidence is that no prejudicial information was disclosed to him during the processing of the renewal application and that he was given no reasonable opportunity before the refusal to make oral or written representations. His *viva voce* evidence is:

Q. And after you made the application to Civil Aviation Authority, were you ever invited at any time were you ever invited to make oral representations to them?

A. No, sir.

Q. Were you ever invited to make written representations to them?

A. No, sir.

Q. Were you ever invited to bring someone along to make representations on your behalf?

A. No, sir.

Q. Also did they provide you with any notice or any document from them indicating to you that this was available?

A. No, sir.

THE COURT: What was available?

MR. FERGUSON: Sorry, the ability to make representation or a notice to make representation. Nothing further -- sorry.

THE WITNESS: No.

BY MR. FERGUSON:

Q. Were you provided with any notice that an adverse decision maybe issued by the department?

A. No.

[54.] I accept that there is force in the proposition that a person in the Applicant's position would ordinarily expect a fair opportunity to address adverse matters before being refused a licence affecting his ability to work. It is well established that where a public authority is to make a decision affecting a person's status, livelihood, or significant interests, fairness will ordinarily require that the person be afforded a reasonable opportunity to be heard. However, the content of fairness is context-specific. It is not fixed or inflexible. What fairness requires depends upon the nature of the power exercised, the statutory framework, the subject matter of the decision, and the interests affected.

[55.] In some cases fairness may require advance notice of the substance of the adverse case and an opportunity to make written or oral representations. In others, a more limited process may suffice.

Construction of section 21(3)

[56.] The issue is whether section 21(3) imposes a statutory requirement to give an applicant an opportunity to make representations before a refusal where the prejudicial material is a criminal conviction that the applicant already knows about and does not dispute. Section 21 (3) and (4) provide:

21. (3) Where any information pursuant to subsection (1) is to be taken into consideration by the Director General that may be prejudicial to a person, the Director General shall disclose that information to the person and give that person a reasonable opportunity to make a written or oral representation, either by himself or some other person, unless such information ought not to be disclosed in the public or national interest.

21. (4) The Director General shall not be obligated to disclose any information brought to his attention, the disclosure of which may affect confidentiality or would be likely to endanger the safety of any person.

[57.] Section 21(3) provides that a person is given a reasonable opportunity to make a written or oral representation where information to be taken into consideration may be prejudicial to that person.

[58.] There is some attraction in the submission that the requirement to “disclose” ought to apply only to material that the Applicant is unaware of – because in such a situation an effective disclosure can be made where the information is unknown to the Applicant and could be used in a prejudicial manner. The corollary is that there is no disclosure or need to disclose where the Applicant is already in possession of the information. As attractive as that submission is, I do not think that that is a correct interpretation of section 21(3).

[59.] Section 21 (3) refers to subsection (1). Section 21(1) lists several factors including “criminal convictions”. It is more likely than not that an Applicant would be well aware of whether he has a criminal conviction. A “criminal conviction” is not exempted from disclosure by section 21(3). Therefore I do not think that that a true construction of the section is contingent on whether the Applicant is aware of the information. I think that the true essence of section 21(3) is that where the information is to, or may be, considered in a prejudicial light, then the Applicant is to be given an opportunity to make representations, i.e. the Applicant is to be given an opportunity to address the information. I do not think that section 21(3) is dependent either on the nature of information or on whether the Applicant is aware of the information. It seems to me that the mischief is caught in the words “*that may be prejudicial to a person*” because it is in that instance that the Applicant risks having an adverse decision made against him. It is in that instance that the Applicant is to be allowed an opportunity to make representations *prior* to the decision being taken. This reflects the common law rule of “*audi alteram partem*”.

[60.] Section 21(3) establishes disclosure and opportunity to respond as the general rule, and creates an express exception where the information ought not to be disclosed in the public or national interest (section 21(4)). It seems to me that if the legislature had intended an additional

implied exception for material already known to the applicant, a similar provision would have been created. I find that section 21(3) is not displaced merely because the prejudicial information is already known to and not disputed by the person affected. The text of the statute contains no such limitation.

[61.] In my opinion, the language used in the statutory text is mandatory. The statutory formula is that where the Director General is taking into account information that is prejudicial, he *shall* allow written or oral representation in relation to that information and to the application. The procedure is triggered by the fact that the information is prejudicial i.e. by the possibility that the application will be refused as a result of the information. I accept the Applicant's submission that "prejudicial" means "detrimental to". The information can only be prejudicial if it is detrimental to the person's application. Therefore once the Director General considers the information prejudicial, then before an adverse decision is made as a result of that information, the Applicant must be given an opportunity to make representation subject to section 21(4).

[62.] I note that, in argument, the Respondents make reference to "public interest" and "national security" but no such evidence is before the court, nor is that cited in the reasons for refusal rendered in the decision letter of March 24, 2021. For the record, I do not find that the Respondents invoked the statutory exception under section 21(4) in order to justify withholding prejudicial information from the Applicant. Reliance on public interest or national security as substantive reasons for refusal is not the same as demonstrating that disclosure of the prejudicial information itself ought not to have been made.

[63.] It is my opinion that section 21(3) requires a reasonable opportunity for written or oral representations in the case of an undisputed conviction. Representation allows an Applicant the opportunity to explain the undisputed conviction or to mitigate against any adverse consequences such as the rejection of his application.

Whether the conviction was prejudicial information

[64.] I find that the Applicant's conviction and incarceration plainly constituted information that "may be prejudicial" to him within section 21(3). The Respondents' own case establishes this. The refusal letter, the Respondents' affidavit and *viva voce* evidence, referred to the fit and proper person criteria and to convictions. Mr. Ferguson's evidence under oath was that the Applicant's five-year custodial sentence together with airport and aviation security concerns, and related matters were central to the refusal. His evidence on cross-examination was, in part:

A. I am aware what the disqualifying factors are.
The disqualifying factors are not that everybody who has
a drug conviction cannot have a pilot license. That is
not what the law says sir.

Q. Okay. But you do agree that a pilot by the
name of [name redacted] is also a person with a conviction for
possession of dangerous drugs?

A. Yes.

....

A. The disqualifying factors in this instance, as
I understand it, is a custodial sentence that is not
meet the criteria for our National Civil Aviation
Security Program, and I think that's spelled out in the
affidavit.

[65.] In a case such as this, where the Director General proposes to rely upon a conviction (and custodial sentence) as part of the basis for refusing renewal, that conviction is undoubtedly information that may operate to the detriment of the applicant. Section 21(3) is therefore engaged unless the statutory exception applies. This means that the Applicant is to be invited to make oral or written representation.

Opportunity to make representation

[66.] It is perhaps useful to here address the purpose or benefit of representations in the case of convictions. I do not consider that the purpose of representations is to be construed as being confined to disputing the historical fact of conviction. The statute itself contemplates that the Applicant may have a criminal conviction and it gives such persons an opportunity to make representations. The Applicant's evidence is that there were persons with convictions who were subsequently issued an aviation document. The Respondent does not dispute that this was the case in at least one other instance. The Respondent also offers that a distinguishing marker in this case was the custodial sentence of the Applicant. That being so, it is clear that the mere fact of a conviction is not an automatic disqualification. What the fact of a conviction means is that the Authority ought to take into account the nature and circumstances of the conviction in considering whether the applicant's fitness has been called into question. That necessarily leaves room for submissions about context, seriousness, age of the offence, pattern or isolation, relevance to the licensed activity, steps toward rehabilitation, subsequent conduct, and proportionality. The Applicant in this case could also be heard on the question of the custodial sentence. These are matters relevant to a decision and these are matters that an Applicant may be heard on by way of representation prior to an adverse decision being made.

[67.] A refusal of an application often turns not simply on whether an adverse fact exists, but on what weight should be assigned to it in light of the statutory purpose. Criminal convictions can

be highly relevant, but their significance may vary according to the nature of the offence, its recency, whether it relates to honesty, violence, public health, or regulatory compliance, and whether there is evidence of remediation. A representation process allows the applicant to address those matters. The fact that the conviction is already known may reduce the need for factual disclosure (where the facts are undisputed) but it does not exempt the decision-maker from permitting representation prior to an adverse decision.

[68.] The Respondent submits that the Applicant was never denied natural justice, that the Applicant received written notice of his right to appeal and that the “Applicant has never been denied an opportunity to make oral or written presentation to the Authority”. There is no evidence that any invitation to make representation was issued or that prejudicial information had then been disclosed or that, importantly, that any invitation preceded the impugned decision. A general assertion of opportunity cannot satisfy the precise statutory obligation in section 21(3).

[69.] The Respondents also argue that the refusal letter contained reasons and that that the Applicant had or could pursue an appeal. The Respondent’s contentions do not adequately address the requirements for a procedurally fair hearing. An Applicant ought to be, in essence, notified that there exists material that may be prejudicial to his interest and *at that stage, prior to a decision being rendered*, be invited to make oral or written representations. It is of no avail, that the Applicant is told, after a decision, that he has a statutory right of appeal. That statutory right of appeal exists independently of the right to a fair process. Fair process requires that the Applicant is given an opportunity to make representations *prior* to any adverse decision being made.

[70.] A statement of reasons after the decision is not the same as disclosure and an opportunity to respond before the prejudicial information is taken into account for refusal. The language of section 21(3) is prospective: where information “is to be taken into consideration,” the Director General shall disclose it and give a reasonable opportunity to make representations.

Conclusion

[71.] In conclusion on this issue, it is my opinion that section 21(3) provides a mandatory procedural safeguard. The Director General “shall disclose” prejudicial information and “give” the affected person a reasonable opportunity to make oral or written representations, unless disclosure ought not to occur in the public or national interest. Section 21(3) prescribes a notice and representations procedure. Nothing in those provisions creates an exception where the adverse material is already known to the applicant or is not factually disputed. The decision-maker must still provide the applicant with a reasonable opportunity to make written or oral

representations before refusing renewal, even where the adverse material is an undisputed conviction already known to the applicant.

[72.] I therefore find that if a refusal to renew is to be based on a conviction, the decision-maker must still give a reasonable opportunity to make representations, because the applicant may wish to address the implications of the conviction even if the fact of conviction itself is admitted.

[73.] It is my determination that the Applicant had a statutory right to make representation in accordance with the principles of natural justice before his application was refused. The decision of March 24, 2021 was arrived at by a procedure which was in breach of the statutory regime and which offended natural justice. In those circumstances, it was a decision taken outside the statutory jurisdiction of the Authority. Therefore the purported decision of March 24, 2021 is a nullity.

Issue 4: Whether the decision is illegal because of bias?

[74.] The Applicant asserts that other pilots with drug convictions had their licences renewed and that this shows bias.

[75.] It is for the Applicant to demonstrate that the other applications were alike in all material respects and that he suffered unfair treatment or bias. There is no such evidence before me. The Applicant attempted to show in cross-examination, but failed to do so, that a number of persons referred to were in fact granted aviation documents by the First Respondent. Only in one instance did the First Respondent recognize and acknowledge a name as its licensee. In distinguishing that licensee, the First Respondent's evidence was that the case of the Applicant was distinguishable from that case because of the Applicant's five-year custodial sentence.

[76.] This court cannot, without more, determine whether there was indeed bias or unequal treatment. Therefore, I do not find that the allegation of bias was established in this case.

Issue 5: Whether the administrative delay amounted to a procedural impropriety?

[77.] Administrative delay may, in an appropriate case, found a public law complaint. Yet delay, without more, does not automatically invalidate the ultimate decision. The question is whether, in context, the period taken rendered the process unlawful, unfair, or is otherwise inconsistent with the statutory scheme.

[78.] The Applicant submits that the period between his application on 12 December 2019 and the refusal on 24 March 2021, approximately 15 months, was unreasonable. He further contends that there was an expectation of a far shorter turnaround i.e. a 2-weeks turn around. The Applicant offered no evidence before the court that such applications were determined within a 2-week window. The witness for the Respondent, Mr. Ferguson, expressly rejected such a turnaround time frame:

Q. And so generally, how long does it take to turn around an application?

A. There's no general turn around time sir.

Q. There's no general turn around? Could you get it --

A. We try to process applications as quickly and as efficiently as possible.

Q. Okay. Would 12 months be within that time? Would that be considered normal?

A. On the face of it, no. Twelve months to take any time to do anything might be considered long, yes.

Q. Okay. What about six months?

A. It depends sir?

Q. It depends. Sometimes applications take a long time because the applicants don't submit the information.

Q. Okay. In the Mr. Bartlett's case, there was no outstanding information. His application was complete.

A. It would appear so, the considerations were ours.

Q. Yes. And so I'm asking sir, generally a turnaround time of two weeks.

A. No sir. I cannot accept that statement. I told you these things were dealt with on a case by case basis. Each applicant is different.

[79.] The Respondents accept that there was delay, but say that it was not unreasonable, that there was no fixed general processing time, and that this case required attention to background matters and security considerations. The Respondent's evidence by Mr. Ferguson is also that

there were other intervening factors such as the Authority having to address the effects of Hurricane Dorian, the emergence of Covid 19, the change in Director General and the coming into force of new Aviation Legislation.

[80.] I accept that there was a substantial period between the application in December 2019 and the refusal in March 2021. However, delay alone does not establish unlawfulness. The evidence is that the application was regarded by the Authority as one requiring serious and thorough consideration in the public interest. I also take judicial notice of the wholesale disruption to normal activities as caused by the Covid-19 pandemic during the time period under consideration.

[81.] Given the nature of the issues raised by the application, including the Applicant's conviction history and security implications, I am not satisfied that the time taken, though lengthy, rendered the ultimate decision unlawful. Nor am I satisfied that the delay caused such procedural prejudice as to vitiate the decision itself. The Applicant's true complaint is with the outcome, not merely the time taken to reach it.

[82.] In the circumstances, I am not satisfied that the delay ground is sufficiently made out so as to render the decision a nullity. The period was undoubtedly lengthy, but not so much so, in my assessment, as to render the delay, of itself, unlawful.

Issue 6: Whether the claim is affected by the existence of an alternative statutory remedy and the Applicant's failure properly to pursue it.

[83.] Judicial review is ordinarily a remedy of last resort. Where a statute provides a review or appeal mechanism apt to address the substance of the dispute, the court will consider whether the Applicant ought first to have pursued that route. The existence of an alternative remedy is plainly relevant. However, it does not automatically defeat judicial review, particularly where the complaint is that the impugned decision was reached in breach of a mandatory pre-decision statutory procedure.

[84.] Failure to exhaust a statutory appeal is not invariably fatal, but it is a strong discretionary consideration. I note that the argument of an alternative remedy by way of appeal was rejected by the Hon. Justice Newton on the Respondents' effort to set aside the court's leave to pursue judicial review. This is another attempt to revisit that argument. Without repetition, I adopt the reasoning of the learned judge in her written ruling in that regard. I will merely add that in the present case, the essence of the complaint is that the Applicant was denied the very hearing

opportunity which section 21(3) requires before refusal and a post-decision appeal does not necessarily cure such a defect. In those circumstances, I would not decline relief solely on the basis that an appeal route existed or may have remained available.

Issue 7: Whether, if any public law wrong were established, the Applicant would be entitled to damages.

[85.] Damages are not an automatic consequence of success in judicial review. Public law relief is primarily concerned with legality. An applicant seeking damages must identify a proper legal basis for such an award and must plead and prove the loss said to have been suffered.

[86.] Rule 54.7 CPR provides:

54.7 Claim for damages.

(1) On an application for judicial review the Court may, subject to paragraph

(2) award damages to the applicant if —

(a) he has included in the statement in support of his application for leave under rule 3 a claim for damages arising from any matter to which the application relates; and

(b) the Court is satisfied that, if the claim had been made in an action begun by the applicant at the time of making his application, he could have been awarded damages.

(2) Any rule and any practice direction relating to the contents and form of a statement of case shall apply to a statement relating to a claim for damages in any application under this Part.

[87.] The guidance notes to Part 54.1, as appear in the Supreme Court Civil Procedure Rules, 2022, Practice Guide January 2024, provides the following:

54.7 Claim for damages.

Pratt v. The Royal Bahamas Police Force and others [2005] 5 BHS J No. 608 at 28-29 (Damages not awarded in the absence of a recognized cause of action in tort being pleaded and proved. “It is well settled that in appropriate circumstances, a Court may award damages in an Application for Judicial Review provided, inter alia, that she has included in her Statement in support of her Application for Leave, a claim for damages arising from any matter to which the application relates and the Court is satisfied that if the claim had been in an action begun by the Applicant at the time of making the Application an award of damages would have been made.”)

[88.] As I understand it, the rule is that the Applicant must have included in his statement both a claim for damages AND a basis for such a claim that would have been sustainable had the claim been made in a private law action. Therefore the claim must disclose a cause of action that had the Applicant pursued it in a private civil lawsuit, he could have been awarded damages in a separate action for damages.

[89.] I accept the Respondents' submission that the Applicant has not pleaded or demonstrated a proper legal basis for damages nor have they laid any evidential foundation for same. I find that there is no discernible pleaded claim or cause of action in this case, which had the claim "been made in an action begun by the applicant at the time of making his application, he could have been awarded damages."

[90.] The claim for damages is dismissed.

CONCLUSION

[91.] Based on the foregoing, I come to the following conclusions.

[92.] Mr. Bartlett's conviction and incarceration were information that may be prejudicial within the meaning of section 21(3) of the Civil Aviation Act 2021. Section 21(3) required the Director General, before refusing renewal, to disclose such prejudicial information and to give the Applicant a reasonable opportunity to make oral or written representations, unless disclosure ought not to be made in the public or national interest. That duty applies even where the prejudicial information consists of a criminal conviction already known to, and not disputed by, the Applicant. On the evidence before the Court, the Respondents did not comply with section 21(3) before issuing the refusal decision of March 24, 2021. As a result, the decision is bad for procedural impropriety.

[93.] I find that the Respondents were nevertheless entitled to regard the conviction, sentence and related security concerns as relevant matters within the statutory fit and proper person analysis. The additional grounds based on irrationality, delay, and bias are not proven.

[94.] It is my determination that the existence of a statutory appeal does not bar relief in the circumstances of this case.

[95.] The appropriate remedy is to quash the refusal decision and remit the matter to the Director General for lawful reconsideration. It would not be appropriate for this Court to direct that the

licence be renewed. The substantive licensing judgment remains for the statutory decision-maker, provided that the prescribed procedure is followed.

COSTS

[96.] The Respondents shall pay the reasonable costs of this action to the Applicant, such costs to be assessed by a Registrar, if not agreed.

ORDER

[97.] The ORDER and directions of this Court are as follows.

- (i) An Order of Certiorari is granted quashing the decision of the Director General dated 24 March 2021 refusing the Applicant's application for renewal of his Bahamian Airman's Licence.
- (ii) The matter is remitted to the Director General for reconsideration in accordance with section 21(3) of the Civil Aviation Act 2021 and this judgment.
- (iii) It is declared that the decision of the Director General dated March 24, 2021 was made in breach of the procedural requirements of section 21(3) Civil Aviation Act 2021 and in breach of the Applicant's right to procedural fairness.
- (iv) The claim for relief in the nature of mandamus directing renewal of the licence is refused.
- (v) The claim for damages is refused.
- (vi) The Respondents shall pay the reasonable costs of this action to the Applicant, such costs to be assessed by a Registrar, if not agreed.

Dated this 26th day of August 2026



Carla D. Card-Stubbs, J

Justice