

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. AXAHCV 2024/0032

BETWEEN

**KENNETH J. MILLETTE
RANDY DICK**

Claimants

AND

**THE COMMISSIONER OF POLICE
ATTORNEY GENERAL OF ANGUILLA**

Defendants

Before: His Lordship The Honourable Justice Ermin Moise

Appearances: Mr. Theon Tross of counsel for the Defendants.
The Claimants are self-represented.

2024: July 26;
December 6.
Re-Issued:
2025: January 15.

JUDGMENT

[1] **MOISE, J.:** This is a claim for judicial review. The Claimants are police officers who were aggrieved at the decision to exclude them from the public pinning of medals to commemorate the accession of King Charles III to the throne. The decision was taken on the basis that the Claimants were the subject of an ongoing disciplinary investigation and, as such, did not meet the criteria which had been set for the public receipt of the medal. In their claim form the Claimants seek the following orders:

- (a) A declaration that the decision of the Commissioner of Police of the Royal Anguilla Police Force (RAPF) to exclude the Claimants from the group of police officers named as recipients of the King's Coronation Medal award is unauthorised, wrong in principle and without basis in law and is therefore invalid;
- (b) A declaration that the investigation launched by the RAPF into the shooting incident that occurred on 4th January 2024 wherein the Claimants have been named as the subjects of said investigation is invalid and of no effect or alternatively is effectively at an end;
- (c) That the list of awardees of the King's Coronation Medal issued by the Commissioner of Police be amended to include the names of the Claimants; and
- (d) That a corrective memorandum be issued by the Commissioner of Police and distributed throughout the entire police force to indicate the inclusion of the Claimants as recipients of the King's Coronation Medal.
- (e) Damages
- (f) Costs

The Facts

[2] The facts of this case are not complicated. King Charles ascended the throne on 6th May, 2023. In honour of this, the British Government determined to award members of the Armed Forces and the Emergency Services with Coronation Medals in recognition of the service they provided at the time of the Coronation. As I understand it, the intention of the award was to express thanks on behalf of the monarch. It is further understood that in order to be eligible for the medal, the officer must have five (5) years continuous service and must not be subject to any disciplinary action. This was to include any disciplinary proceeding which may result in dismissal. It is also not in dispute that there was no requirement from the authorities in London that there be a public

pinning or award ceremony for the distribution of the medals. It was stated in evidence and uncontroverted that, in the UK, the medals are simply sent to the recipients in the post.

- [3] In Anguilla, the Governor made the decision to distribute the medals to the eligible offers by way of public pinning in a ceremony at the Governor's official residence in Old Ta. The award of the medal was extended to members of the Royal Anguilla Police Force, the Anguilla Fire and Rescue Service, His Majesty's Prison and the Health Authority of Anguilla. There is no dispute that, on the basis of the criteria set by the Governor, the Claimants were both eligible for the public receipt of the award, save for the issue of the outstanding investigation which was pending against them.
- [4] The evidence presented by the Claimants was that on 27th May 2024, Acting Superintendent Helmert Mason, informed Inspector Millette that the ceremony for the award of the Medal to the local police officers was scheduled to take place on 4th and 6th June 2024. Insp. Millette was also informed that the Claimants were not included in the list of officers who would be receiving the award at the ceremony. Insp. Millette stated that he was unaware of any reason he would not be included in this list. He states further that on 31st May, 2024, an email was sent from the Corporate Development Department of the RAPF revealing the eligible officers who were to receive the Medal. This was broadcast to the entire police force. The list of awardees was observed to be over 90 percent of the serving members of the RAPF. The Claimants both describe this as being demeaning and humiliating and a slight on their reputation as police officers.
- [5] Inspector Millette described his policing career as spanning over a substantial period of 17 years prior service with the Royal Grenada Police Force. From then on, he served as a member of the RAPF since 1st August 2007. It is his evidence that he boasts an unblemished record as a police officer within the RAPF. Inspector Millette counts among his accomplishments the award of the Platinum Jubilee Medal and the Police Long Service Medal. He states in his evidence that on the cusp of retirement, he has maintained an impeccable disciplinary record with effectively no charges, and with no warnings or reprimands of any kind ever having been issued against him. He has been an Inspector of Police since 2018.

- [6] PC Dick enlisted in the RAPF on 1st August 2007 following a ten-year stint of service with the Royal Grenada Police Force. In the pleadings and evidence, it is stated that during his time in the RAPF PC Dick has worked in a broad range of areas from beat and patrol and manning the Blowing Point Police Station. He also served as Instructor with the Anguilla Recruit Training Academy in addition to being a training coordinator. PC Dick currently serves as the Public Media Relations Officer of the RAPF as well as executive member of the Police Welfare Association.
- [7] After making enquiries of the Commissioner of Police regarding the medal ceremony, the Claimants received an email from Superintendent Mason informing them that the reason for their exclusion was on account of an ongoing disciplinary investigation in which they were the subjects. The Claimants made further inquiries of the Commissioner of Police and by way of email dated 7th June, 2024 the Commissioner responded by stating that the criteria for the public award and pinning of the medals was set by the Governor and that, although the Claimants were generally eligible, they were nonetheless subject to an ongoing disciplinary investigation and therefore could not take part in the ceremony. The Commissioner also informed the Claimants that no decision had been taken to not award the medal and that he would personally do so after the completion of the investigation. It is important therefore to briefly outline the nature and history of the investigation against the Claimants.

The Nature of the Investigation

- [8] On 4th January, 2024, a shooting incident occurred in the area of NAPA Auto Parts. This resulted in the death of a young man. At the time, the Claimants were off duty and in the vicinity. It is not clear as to the extent to which they witnessed the murder, but the allegation is that they took no steps as police officers to assist, at the very least, in securing the scene of a major crime. An investigation was therefore launched against them for dereliction of duty pursuant to section 28(d)(ii) of the **Police Regulations**. As I understand it, the investigation was headed by Inspector Vydia Harrigan (Insp. Harrigan) on behalf of the Professional Standards Department (PSD).
- [9] In a statement dated 17th April, 2024, Inspector Harrigan outlined the nature of the allegations against the Claimants in more detail. She stated that Inspector Millette had contacted the police

station to inform of the shooting. About 15 to 20 minutes later, police officers were deployed to the scene, and she observed the Claimants at the scene. However, it is alleged that the Claimants did not attempt to secure the scene, gather information from potential witnesses or even check for signs of life or render any assistance to the victim. It is also alleged that duty statements were requested of the Claimants, which neither of them provided. I note that both Claimants provided witness statements. However, it appears to me from a perusal of the file that the duty statements requested by Insp. Harrigan and later Superintendent Shem Wills were something different.

[10] Insofar as the investigation is concerned, the Claimants raise a number of objections to it in the current proceedings. These objections all center around the compliance, or lack thereof, with an internal policy document issued by the Commissioner of Police in 2019 as well as long standing norms in relation to such internal investigations. The Claimants' complaints can be summarized as follows:

- (a) That inspector Harrigan's appointment as the investigator was improper because she was junior to Inspector Millette. Notwithstanding that they are both inspectors, Inspector Millette argues that he is senior in years of service in the police force. He states that it is customary for officers to be investigated by colleagues who are higher than them in rank. He argues therefore that under long standing conventions, Inspector Harrigan should not have been appointed to lead the investigation; and
- (b) In accordance with the policy, an investigation of this nature must be complete within 30 days from the date of its commencement, unless an extension of time had been sought from and granted by the Commissioner of Police. It is also mandated that there be periodical updates of the investigation to the Commissioner and to the subjects of the investigation. It is alleged that these procedures were not complied with.

[11] For his part, in cross examination, the Commissioner of Police acknowledged certain procedural failings within the investigation. However, he makes two points. Firstly, the internal policy is only

a guideline and secondly, given that he sits in an adjudicative capacity he did not wish to get involved in the investigation. He none-the-less eventually recused himself altogether, given the nature of how matters have unfolded. In fact, as it relates to his role in the investigation and disciplinary process, the Commissioner stated the following in his affidavit of 23rd July, 2024:

Whilst I note that the Claimants seek as relief a declaration that the investigation launched by the RAPF against them is invalid or at an end, I am advised by my counsel and do verily believe that this is an inappropriate course of action for generally I sit in a quasi-judicial position in relation to the findings of the investigation to determine whether to refer a charge to the Governor. I have therefore not read the contents made in support of that relief, but I have made no decision in relation to the investigatory process. Furthermore, I have made no decision with respect to the disciplinary process instituted against the Claimant and have had no part in the disciplinary process as yet. I am therefore uncertain as to what decision has been made by me which may be subject to challenge.

I am aware that Charges have been laid against both officers but, given the Claimants' posturing I have removed myself from the process in its entirety and the disciplinary charges will be heard by the Magistrate.

[12] In addition to the complaints regarding compliance with the policy document, the Claimants also state that at the time the medals were to be awarded, they had not been informed of any charge which had been brought against them. It was also argued that there was no evidence of a charge having actually been laid at that point. I note, however, that Inspector Harrigan and Superintendent Shem Wills had initially spoken with the Claimants regarding the allegations made against them and requested statements from them. The formal charges were laid on 11th July, 2024. That was subsequent to the filing of this claim and the award of the medals. One other complaint made by the Claimants was that there were officers included in the list who had been the subject of disciplinary proceedings before and had even been found guilty. Those persons were still awarded the medal publicly. However, much information was not provided regarding the specific nature of those charges and the findings of those investigations.

[13] At the close of the trial in the present case, the court encouraged the parties to have a further discussion on the issues. The medal ceremony had, by that time, long passed and there was nothing which could be done about it at that stage. Further, the court also expressed concern that there was an ongoing disciplinary proceeding which had commenced and questioned whether that may not have been an appropriate forum within which to raise the concerns about the investigation itself. Prior to the delivery of this judgment, the court was informed that the disciplinary proceedings had been withdrawn but no information was provided as to the reasons for this withdrawal.

The Law

[14] The general principles of judicial review are well known and there is no need for elaborate exposition in this case. It would suffice to say that the court would intervene if it can be shown that a decision or action was taken which was either unlawful, unreasonable or irrational. Further, the court would intervene if there had been some breach of a legitimate expectation which resulted in a measure of unfairness or negative impact on the Claimants sufficient to ground a claim for judicial review. In the circumstances of this case, and the submissions raised by one or both sides, 3 issues arise for consideration. They are:

- (a) Whether there was a valid disciplinary investigation against the Claimants;
- (b) Whether the Commissioner of Police, on account of this investigation, took a decision to exclude the Claimants from a list of awardees for the King's Medal; and
- (c) Whether that decision, if taken, ought to be set aside in these judicial review proceedings.

Disciplinary Proceedings within the RAPF

[15] Section 75 of the **Anguilla Police Act**¹ empowers the Governor of Anguilla to pass regulations *generally, for the good government of the Force and all such other matters as may, from time to time, be deemed expedient for rendering the Force efficient in the discharge of its duties and for securing proper discipline therein*. The Act goes on to state that *[a]ll rules and regulations made under this Act shall have the force and effect of law as if they had been incorporated in this Act*.

[16] In the exercise of those powers, the Governor promulgated the **Police Regulations** which are currently in force in Anguilla. Of particular importance to the issues raised in this case are the provisions of sections 26 to 28 of the Regulations. By virtue of section 26, the Regulations establish a distinction between offences created under the **Anguilla Police Act** (which does not trouble the court in this instance), and disciplinary offences created by section 28 of these Regulations. Section 27 states that offences created under the Act are triable in a court of law. However, offences against section 28 of the Regulations are to be subject to a different regime which I will outline later on in this judgment.

[17] For the purpose of the issues raised in this case, it is the provision of section 28(d)(ii) of the Regulations with which we are most concerned. That section makes it an offence for a police officer to *neglect, or without good or sufficient cause omit promptly and diligently, to attend to or carry out anything which is his duty as a police officer*. It is this section of the regulations the Claimants were said to have allegedly breached, therefore leading to the commencement of an investigation.

[18] As it relates to the procedure for the commencement of proceedings under section 28 of the Regulations, section 29 states that *[a] charge or complaint in respect of any of the offences specified in section 28 shall be heard and determined in compliance with section 35 of the Act*. Section 35 of the Act states as follows:

¹ Revised Statutes of Anguilla c. A70

Hearing and determination of charge or complaint

35. (1) Subject to subsection (2), when a charge or complaint is made against any subordinate police officer or constable for breach of any disciplinary regulations made under this Act, any Gazetted Police Officer, or the Magistrate on the written request of the Commissioner of Police, may hear and determine the charge or complaint and may impose any of the following sentences coupled in the case of the Magistrate or in the case of a Gazetted Police Officer, other than the Commissioner of Police, if he thinks fit, with a recommendation for dismissal from the Force, that is to say—

- (a) caution or reprimand;***
- (b) suspension, deferment or stoppage of increment;***
- (c) fine not exceeding \$125;***
- (d) reduction in rank;***
- (e) forfeiture of good conduct pay or badges, or of any benefit arising from service;***
- (f) a surcharge in an appropriate amount in respect of his neglect or failure, without reasonable excuse, as an accounting officer or delegate of an accounting officer or as a public officer under section 10 of the Financial Administration and Audit Act to comply with his responsibilities under that Act or its regulations or the financial instructions issued by the Accountant General under that Act;***
- (g) performance of extra duty.***

(2) Where any charge or complaint is made against any police officer holding the rank of Inspector, station sergeant or sergeant, such charge or complaint shall be heard and determined by the Commissioner of Police, or by the Magistrate on the written request of the Commissioner of Police and the Commissioner of Police or the Magistrate may impose any of the sentences

provided in paragraphs (1)(a), (b), (c), (d), (e) and (f) coupled in the case of the Magistrate, if he thinks fit, with a recommendation for dismissal from the Force.

(3) The Magistrate or Gazetted Police Officer shall have the same powers in respect of securing and compelling the attendance of witnesses and their examination upon oath and otherwise as are conferred upon the Magistrate under the Magistrate's Code of Procedure Act.

(4) Every person who, on the hearing of any such charge or complaint, gives false evidence on oath shall be deemed guilty of perjury.

[19] As I indicated earlier, the investigation against the Claimants was grounded on an alleged breach of section 28(d)(ii) of the Regulations. In such an instance, the Commissioner of Police would have therefore been correct in saying that his role in the matter is not one of investigator, but potentially adjudicator. Under section 35 of the Act, the task of determining the charges rests either with the Commissioner of Police or, if he so requests, with a Magistrate.

[20] It is not contested that, in 2019, a policy document was adopted by the Commissioner of Police. This document is titled, **RAPF PSD and Complaint handling Policy**, and it is said to have the purpose of setting out **the high quality of standards of conduct which if consistently maintained encourages the support of the community for the police purposes and goals**. The Policy also outlines the functions of the Professional Standards Department (PSD) of the RAPF and that is said to be in effect from 1st January, 2019. The Department's main objective is **the maintenance of good conduct in the RAPF**. In light of this, section 2.3 of the Policy states as follows:

The prevention of misconduct is one of the primary responsibilities of the PSD. It does this by responding to allegations of misconduct against the RAPF and its officers. The PSD will be responsible for recording, registering, and controlling the investigation of complaints against officers; supervising and controlling the investigation of alleged misconduct within the RAPF

through standards of investigation where objectivity, fairness and justice are assured by intensive and impartial investigation and review. By conducting a periodic analysis of misconduct, the PSD Standards Unit helps to identify policy, training and supervisory practice that contribute to a climate in which misconduct occurs and by inference can be prevented.

[21] Section 2.7 of the Policy goes on to outline 5 key objectives of the PSD. They are as follows:

- (a) protection of the public and building/maintaining public confidence in the RAPF*
- (b) Protection of the employee;*
- (c) Protection of the RAPF;*
- (d) Correction of procedural training problems; and,*
- (e) Removal of unfit personnel.*

[22] Despite the fact that the Commissioner of Police sits as an adjudicator in disciplinary proceedings which may emerge from the investigations of the PSD, the policy states that *[t]he responsibility for supervising, conducting, coordinating and maintaining the PSD of the RAPF lies with the Commissioner of the RAPF. All findings from the investigating officers will be prepared in writing and presented to the Commissioner.*

[23] Insofar as it relates to the conduct of an investigation, section 10 of the policy states that *[i]n conducting investigations of alleged officer misconduct, all appropriate investigation techniques and methods should be employed, consistent with legal requirements and all necessary concern for the individual rights of the accused officer. A PSD investigation should be conducted with the same degree of competence as is devoted to a criminal investigation.* The section also goes on to say as follows:

10.4 The PSD shall be responsible for providing the Commissioner with status reports on the progress of the investigation every seven (7) days. These reports contain all pertinent information relating to the progress of the investigation.

10.5 If the substance of a complaint, if proven, would be of grave nature or is an accusation of a serious crime and immediate action is deemed necessary, the Commissioner, shall be notified forthwith in order that an investigation can be initiated without delay.

10.6 Before an RAPF officer is questioned or directed to submit a report regarding a complaint, and unless the Commissioner determines that disclosure might jeopardize the investigation, such officer shall be issued a written statement of the allegation and in either case the officer will be advised of their rights and responsibilities relative to the investigation.

[24] Of particular importance to this case are the provisions of section 16 of the Policy. It states as follows:

16.1 Any PSD administrative investigation must be commenced immediately upon receipt of the complaint and must be completed within 30 days.

16.2 If extenuating circumstances preclude completion within 30 days, the Officer-in-Charge of PSD Standards shall request an extension from the Commissioner in writing, and provide written notification to the officer (if previously notified of the complaint and investigation) and complainant of the delay.

16.3 If the investigation is not completed within 30 days, the complainant shall be provided a progress report every 30 days until the completion of the investigation.

16.4 The designated PSD investigators will submit a monthly report to the Commissioner on the status of all open files.

[25] Section 18 of the policy states that upon completion of an administrative investigation the PSD is to present a written report to the Commissioner of Police. Upon receipt, the Commissioner is to take whatever action he deems necessary. The subject of the investigation is also to be notified of the findings whether there is exoneration, or a disciplinary charge is likely to be brought.

The Submissions

[26] The Claimants argue that the first issue for consideration is whether there was a valid disciplinary investigation against them at the time of the award of the King's medal. In submissions they refer to paragraphs 15 to 19 of the claim form as being reflective of the arguments they wished to raise. In these paragraphs the following submissions are made:

- (a) The allegation made against them is not in the nature of a disciplinary proceeding. A document was issued shortly after the shooting incident that suggests that an investigation was launched into the matter. The incident occurred on 4th January 2024. However, there is no charge subsisting against the Claimants that they are aware of and the investigation, so-called, is defective in a number of respects.
- (b) The official policy of the RAPF requires that the officer in charge of such investigation shall be at least one rank above those who are subject to the investigation. Despite this rule, Inspector Vydia Harrigan who is a junior to Inspector Millette, has been put in charge of the investigation.
- (c) The wrong documentation was used to record the commencement of the investigation.
- (d) It is a long stated and well documented policy that any administrative investigation of an officer by the RAPF must conclude within 30 days of first commencement. Therefore, by virtue of the very own documented policy of the

RAPF, the investigation having not been concluded within the stipulated time period without more, renders the investigation invalid and effectively at an end.

- (e) That there was no evidence of a decision having been made regarding any charges being brought against the Claimants.
- (f) The list of Medal awardees is comprised in part of police officers who have been subject to actual disciplinary procedures and have been convicted or found guilty as charged.

[27] The Claimants referred to the case of ***Council of Civil Service Unions v Minister for the Civil Service***² in their reliance on the principles of Wednesbury unreasonableness, the rules of natural justice and the duty of the Commissioner of Police to act fairly in the circumstances. They submit that the decision of the Commissioner or Police to deny them the medal was unsound, unfair, capricious, and wholly unreasonable, and cannot be justified on any sensible or reasonable grounds. They submit further that it was unreasonable to exclude them as long serving members of the RAPF whose fellow officers hold them in adulation and utter respect, from participation in the award ceremony for the presentation and pinning of the medal. The Claimants also submit that the decision is tainted by illegality in the sense in which Lord Diplock has coined the expression, given the baseless charges preferred against them and the affront to the principles of natural justice that the decision represents.

[28] The Claimants also refer to the case of ***Ng Yuen Shiu***³ in support of the proposition that they have a legitimate expectation that they would receive the award. This was based on the fact that they had both received long service awards in the past and had keenly looked forward to receiving the award this time around. The Claimants also relied on the case of ***Marks v Minister of Home Affairs***⁴ in submitting that not only expectations or benefits of a procedural nature but also benefits of a substantive nature are covered by the legitimate expectations doctrine.

² [1984] 3 All ER 935

³ [1983] 2 All ER 346

⁴ (1984) 36 WIR 106

[29] The Claimants also go on to submit that the Commissioner of Police had breached the rules of natural justice in not giving them an opportunity to be heard before excluding them from the list of awardees.

[30] In submissions filed on behalf of the Commissioner of Police it is argued that the Court ought to appropriately dismiss this claim as the decisions under challenge are not amenable to judicial review and in any event were not, as a matter of fact, made by the Defendants.

[31] It is submitted that there was no decision of the Commissioner of Police to deny the Claimants the award of the Coronation Medal. The facts do reveal that the Claimants were informed that they would receive the medals once the disciplinary process was complete. There was also no decision to debar their attendance at the ceremony hosted by the Governor. That was because the criteria for attendance at the ceremony was set by the Governor and not the Commissioner of Police.

[32] Insofar as it relates to the decision to launch an investigation into the conduct of the Claimants, it is submitted that neither the evidence of the Claimants nor that of the Defendants disclose a decision taken by the Commissioner of Police to launch this investigation. The only decision taken by the Commissioner was to remove himself from the quasi-judicial role he is permitted to undertake in hearing such charges. It is submitted therefore, that the Commissioner of Police having made no decision in this regard, is an improper party to any challenge against this investigation.

[33] It is submitted, on the authority of *X (Minors) v Bedfordshire County Council & Ors*⁵ that the Court has no authority to award damages in the circumstances as the Claimants have failed to establish a private law cause of action in the course of judicial review.

The Court's Findings

[34] On the question of whether or not there was a valid investigation launched against the Claimants, I find that there was. Firstly, I find that the allegations made against the Claimants for their

⁵ [1995] 2 A.C. 633

actions, or lack thereof, on 4th January, 2024 were significant issues which would properly be subject to an investigation by the PSD. The court is not here concerned with the substantiation of the allegations. That is a matter which would certainly best be left for the tribunal to determine. However, on the face of it, I am satisfied that inaction on the part of police officers who witness a murder in not securing the scene, identifying potential witnesses at the scene and not attending to the victim on the scene, are matters which legitimately fall within the ambit of section 28(d)(ii) of the **Police Regulations**. The PSD was therefore well within its right to launch an investigation.

[35] Secondly, I find that such an investigation is not launched by the Commissioner of Police but by the PSD. The question is whether or not the Commissioner is vicariously responsible for that decision to launch an investigation, sufficient to ground a claim for judicial review against him. The Claimants argue that the Commissioner of Police is generally responsible for the actions of the PSD. That is in fact what is in the policy where it states that ***[t]he responsibility for supervising, conducting, coordinating and maintaining the PSD of the RAPF lies with the Commissioner of the RAPF.*** Counsel for the Commissioner on the other hand argued that this is not a decision which was made by the Commissioner, and he is therefore not subject to judicial review for a decision not made by him. The Commissioner also expressed various concerns in his own evidence about his role in an investigation which would later call upon him to sit as an adjudicator.

[36] Whilst I agree that the policy places the PSD generally under the supervision of the Commissioner, the concerns expressed in his affidavit in response are valid. Something must be said about the current conflict which arises between the policy on the one hand, and the **Anguilla Police Act** and **Police Regulations** on the other. The Act and Regulations place the Commissioner of Police in a capacity to adjudge and make determinations regarding discipline which may result in the recommendation for dismissal of a police officer. On the other hand, the policy gives him a direct supervisory role of an investigation which may lead to such a charge.

[37] This is a policy which may well deserve some review and an independent body be set up to address the issue of serious complaints against police officers in keeping with the provisions of the Act and the Regulations. The overlap in the role of the Commissioner of Police does certainly give rise to potential conflicts of interest. In addition, a PSD comprising police officers

investigating each other, can also give rise to the same issues. A separate and independent complaints commission may resolve these issues.

[38] Having said this however, I am not of the view that there is a need to reconcile the question of whether the decision to launch an investigation by the PSD is attributable to the Commissioner of Police for the purpose of these judicial review proceedings. This is because I am fortified in my mind that the launch of the investigation was valid and was a decision properly taken. There is therefore no reason to grant a declaration that the investigation was invalid.

[39] One further issue for consideration is whether the failure to follow the procedures set out in the policy effectively nullifies the investigation, makes it ineffective and brings it to an end. I am not so satisfied that this is the case. This is an issue which must be placed in its proper context. It is not merely a question of the investigation itself but the purpose of the launching of such an investigation must be considered. Ultimately the investigation is designed to determine whether a charge should be brought within the provisions of the Regulations which were passed and promulgated by the Governor. The Governor's authority to pass such regulations was granted by Parliament in the **Anguilla Police Act**. The Policy adopted by the Commissioner of Police in 2019, itself indicates that such an investigation ought to be given the same skill and care that investigating officers would in a criminal case. It has never been the case that in criminal matters, the failure to follow procedure would necessarily bar a criminal prosecution or render evidence inadmissible as a matter of course. It would all depend on the circumstances of the case and the manner in which the breach of rules or protocols would affect the overall fairness of the trial process.

[40] In the current case for example, it is argued that Inspector Harrigan ought not to have been the investigator because she was of equal rank but junior in years to Inspector Millette. Whilst that may be a breach of a long-standing tradition of the RAPF, it would be wrong to suggest that credible evidence uncovered during an investigation would be rendered inadmissible in a tribunal hearing on account of this tradition. If there was credible evidence uncovered by Inspector Harrigan in her investigation to warrant a charge under section 28(d)(ii) that breach of protocol could not be a bar to the commencement of disciplinary proceedings and therefore could not invalidate the investigation. There is nothing in the policy, or the legislation which can draw the

court to the contrary conclusion. The court must also consider the impact of the failure to observe the timelines for completing an investigation.

[41] It was not controverted that the investigation into the actions of the Claimants was not complete in 30 days and that there had not been a written request for an extension made to the Commissioner of Police. The Claimants had also not received any updates into the investigation. This is perhaps a more substantive breach of the protocols set out in the policy. However, I am not of the view that this failure invalidated the investigation, nor does it effectively bring it to an end. Again, I make similar considerations to what was expressed in paragraph 39 above. Ultimately the question is whether credible evidence was uncovered which warrants the lodging of charges under section 28(d)(ii) of the investigation. The impact of the breach of the policy on the fairness of the tribunal hearing is a matter which the tribunal is well capable of considering.

[42] Mention was also made of the use of the wrong form in commencing the investigation. Again, form cannot become the master of substance. The use of the wrong form is a purely procedural and administrative issue and cannot therefore invalidate an investigation into a serious allegation such as the one in this case.

[43] In his affidavit in response, the Commissioner of Police indicated that at the time of the launching of the investigation, there was an increased level of violent crime in Anguilla. The resources of the police force were stretched, and he accepted that during this time sufficient attention may not have been placed on following up with this investigation and others insofar as it relates to the provisions of the policy. He had also not made a final decision on what to do with the findings of the investigation, although by that time charges had been lodged. The Commissioner then exercised his powers to transfer the adjudication of the matter to the Magistrate and recused himself. I find nothing wrong with this position and I am of the view that the issues raised regarding the investigation are matters which the magistrate was well capable of addressing. I find, therefore, that the Claimants are not entitled to a declaration that the investigation was invalid and of no effect or alternatively is effectively at an end.

[44] However, I do agree that the protocol established in the policy would have given the Claimants a legitimate expectation that they would be followed. The pleadings and evidence establish that the Claimants were aware of the launching of the investigation. They were asked to submit

statements. However, the evidence seems to also suggest that at the time of the award of the medals, the Claimants had not been informed of the status of the investigation as a matter of course in keeping with the policy. I take it that they were genuinely surprised that the investigation was a bar to them receiving the award publicly. An investigation can have a negative impact on a police officer, and the longer it takes, the greater the potential for such an impact.

[45] In my view, I find no malice or ill-intent on the part of the Commissioner of Police. I find that there was a genuine view here that the investigation was a serious one which could have potentially led to serious charges being brought against the Claimants. However, I am not of the view that the investigation itself was a bar to the Claimants receiving the award publicly. This is because a distinction should have been drawn between an investigation and a disciplinary charge. What the Commissioner said in his own statement was that the Governor's criteria were that the officer must be of 5 years' service and not be subject to any "disciplinary proceeding" which may result in dismissal.

[46] Nothing was presented to the court to define what was meant by "disciplinary proceeding" in the criteria set by the Governor. It is open to debate as to whether an investigation is the same as a disciplinary proceeding. I am of the view that one would be entitled to the maintenance of one's record and reputation until such time as the investigation concludes that there is sufficient evidence to lay charges against the Claimants. At the time of the award of the medal no charge was pending, and the Claimants were not updated on the status of the investigation against them. The charges, though brought later, were subsequently withdrawn.

[47] In the circumstances I am of the view that the Commissioner of Police did make a decision to exclude the claimants from the list presented to the Governor. I have concluded that the Claimants should have been included in the list of awardees. As I have stated earlier, I find no malice or ill-intent on the part of the Commissioner or Police and, contrary to what has been submitted by the Claimants, there is no evidence here to suggest any deliberate attempt to embarrass them. The ceremony has long passed and a corrective memorandum as is requested in this claim is not appropriate. The Commissioner did indicate that it was his intention to award the Claimants personally. An attempt had been made to do so at one point and, as I understand it, this led to an unpleasant incident between himself and the Claimants. The Claimants indicated

in their pleadings that they are not as concerned about the actual receipt of the medal, notwithstanding the nature of these proceedings. It would suffice therefore, if the medal is awarded to the Claimants and a memorandum issued to the members of the RAPF informing them that this was done and that they were eligible and did receive the medal.

[48] On the issue of damages, counsel for the Commissioner argues that the Court has no authority to award damages in the circumstances as the Claimants have failed to establish a private law cause of action in the course of judicial review. Counsel cited the case of ***X (Minors) v Bedfordshire County Council & Ors***⁶ as authority for that proposition. I agree with that submission. There is no evidence here that the Claimants have suffered any loss which would have been recoverable in a private law claim. They were not suspended from work and there was no negative financial impact on them. There was also no evidence of any non-pecuniary loss which is recoverable here. The Claimants have complained about the embarrassment they suffered and the fact that this decision would have lowered them in the eyes of their colleagues. Various affidavits were filed on their behalf attesting to their character. However, the evidence does not substantiate any loss of reputation here. I find no ill-intent on the part of the Commissioner of Police and see no basis for an award of damages in what is a claim for judicial review.

[49] There are two final issues which I wish to raise. The Claimants previously filed an application seeking leave to amend the claim. This amendment sought to have a decision of the Commissioner to transfer PC Dick to the Beat and Patrol Department judicially reviewed. I did not grant this application, and the claim was not amended to include this as an additional ground for judicial review. However, submissions were filed on that point by both sides to this claim. This is not a matter contained in the pleadings and the court would decline to address this point in this judgment. There is no claim currently pending against the Commissioner seeking such a declaration.

[50] Secondly, there is no basis for a claim against the Attorney General as he has made no decision in this case which is reviewable.

⁶ [1995] 2 A.C.

[51] In the circumstances the remedies sought in the claim for judicial review are generally denied save for the order that:

- (a) The Claimants are to receive the medal, and a memo is to be sent to the members of the RAPF informing that they are recipients of the medal;
- (b) There is no order as to costs.

Ermin Moise
High Court Judge

BY THE COURT



REGISTRAR