



[2025] UKPC 46
Privy Council Appeal No 0020 of 2024

JUDGMENT

**Chief Fire Officer and 2 others (Respondents) v
Siewnarine Ramsaran (Appellant) (Trinidad and
Tobago)**

**From the Court of Appeal of the Republic of
Trinidad and Tobago**

before

**Lord Sales
Lord Hamblen
Lord Leggatt
Lord Burrows
Lord Stephens**

**JUDGMENT GIVEN ON
25 September 2025**

Heard on 15 July 2025

Appellant

Anand Ramlogan SC

Jodie Blackstock

(Instructed by Freedom Law Chambers)

Respondent

Rowan Pennington-Benton

(Instructed by Charles Russell Speechlys LLP (London))

LORD SALES:

1. This case is concerned with the procedure for appointment to senior posts in the Fire Service in Trinidad and Tobago. The public service is an important source of employment in Trinidad and Tobago and there is an extensive legislative regime in place to regulate recruitment and promotion within it, in the form of the Public Service Commission Regulations (“the Regulations”) enacted pursuant to section 129 of the Constitution. The Regulations include chapters dealing with different parts of the Public Service. Chapter XII, comprising regulation 146 and following, is concerned with the Fire Service (“the Service”). Part II of that Chapter, comprising regulation 147 and following, is headed “Appointments, Promotions and Transfers”.

2. The head of the Service is the Chief Fire Officer (“the CFO”), the first respondent. The Public Service Commission (“the Commission”), the second respondent, is given various important functions under the Regulations, including the function of deciding on promotions within the Service. The Attorney General, the third respondent, has been joined in the proceedings to represent the State.

3. The appellant was an officer employed in the Service from 1 June 1979, beginning as a Fireman. He retired from the Service in 2022. In his long career he received promotions, attaining the rank of Divisional Fire Officer (“DFO”) in February 2016. In March 2016 he was appointed as acting Assistant Chief Fire Officer (“ACFO”) for a time, and was again appointed to that role for several periods after that. In 2019 the appellant unsuccessfully sought promotion to the role of acting Deputy Chief Fire Officer (“DCFO”), the position above ACFO in the Service hierarchy. The DCFO is the second highest ranking officer in the Service, below the CFO. The appellant complains that he was unlawfully passed over for promotion to the role of acting DCFO at that time and also later on, in April 2020.

4. The appellant seeks relief by way of judicial review and brings a constitutional complaint, claiming that his rights under section 4(b) of the Constitution (protection of the law) and section 4(d) of the Constitution (equality of treatment) have been breached.

The legislative framework: Chapter XII of the Regulations

5. Regulations 154, 155, 156 and 158 are the critical relevant provisions in this case. In material part they state:

“154. (1) Subject to regulation 157, the Chief Fire Officer shall ensure that recommendations made in relation to an acting appointment are based on the criteria prescribed in regulation 158.

(2) Where, in the exigencies of the Service it is not practicable to apply the principles prescribed in regulation 158, the fire officer selected for an acting appointment shall not be given any preference over other eligible officers for a substantive appointment.

155. (1) Subject to regulation 157, where an acting appointment falls to be made by the Commission, the Chief Fire Officer shall notify all eligible fire officers.

(2) For the purpose of subregulation (1), the notice may be in respect of an acting appointment which falls to be made within a period specified in the notice.

(3) The Chief Fire Officer shall allow a period of seven (7) days to elapse after the issue of the notice before forwarding any recommendations to the Director for the purpose of allowing the fire officers to make representations in respect of that acting appointment.

(4) Where representations are made to the Chief Fire Officer by or on behalf of a fire officer, the Chief Fire Officer shall forward the representations in their original form to the Director.

(5) When submitting recommendations to the Commission for an acting appointment to an office, the Chief Fire Officer shall advise the Commission of the reasons why an eligible fire officer who is more experienced than the recommended officer is being passed over.

156. Except in very special circumstances or in cases of sudden illness, the Chief Fire Officer shall submit his recommendation for an acting appointment to an office no later than twenty-eight (28) days preceding the date on which the acting appointment is intended to become effective.

...

158. (1) In considering eligible fire officers for promotion, the Commission shall take into account the experience, educational qualifications, merit and ability, together with the relative efficiency of those fire officers.

(2) Where the Commission has to select an officer for promotion from officers who appear to be of equal merit, the Commission shall determine its selection on the basis of the relevant and relative experience of the officers.

(3) In the performance of its functions under subregulation (1), the Commission shall take into account as regards each fire officer—

(a) his general fitness;

(b) any special qualifications;

(c) any special courses of training that he may have undergone (whether at the expense of Government or otherwise);

(d) the evaluation of the officer's performance as reflected in his performance appraisal report;

(e) any letters of commendation or special report in respect of any special work done by the fire officer;

(f) the duties to be performed in the office of which the fire officer has experience;

(g) demonstrated skills and ability relevant to the office;

(h) any specific recommendation of the Permanent Secretary or Chief Fire Officer for the filling of the particular office;

(i) any previous, relevant employment of his in the Service, the public service, or elsewhere;

(j) any special report for which the Commission may call;

(k) his devotion to duty.”

6. Regulation 146 sets out definitions. It provides that “‘eligible officer’ means a fire officer who satisfies the qualifications of an office”; and that “‘fire officers’ or ‘officer’ means a person appointed to an office in the Fire Service”.

7. Regulation 9 of the Fire Service (Terms and Conditions of Employment) Regulations (“regulation 9”) sets out the qualifications, in particular educational qualifications, required of those seeking appointment to the First Division of the Service.

8. It is relevant by way of background to mention that a previous version of the Regulations included a provision, regulation 26, that where an acting appointment falls to be made otherwise than as a prelude to a substantive appointment the officer appointed should “as a general rule be the senior officer ... eligible for such acting appointment” (“old regulation 26”). This provision had been disappplied in relation to the Service well before the matters of which the appellant makes complaint.

Section 4 of the Constitution

9. Section 4 of the Constitution provides in material part as follows:

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:

...

(b) the right of the individual to equality before the law and the protection of the law;

...

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions ...”.

Factual background

10. The Fire Service Act provides that the Service is organised in two divisions: see section 5 and the Second Schedule. The officer grades specified in the Second Schedule

as comprising the First Division are the CFO, the DCFO, ACFO, DFO, Brigades Engineer and Third Officer (which the parties agree corresponds to the role of Assistant Divisional Fire Officer – “ADFO”). ADFO is the grade at the lowest level within the First Division. The officer grades comprising the Second Division are Fire Equipment Supervisor, Fire Station Officer, Fire Sub-Station Officer, Fire Sub-Officer, Fireman and Fireman Apprentice.

11. The appellant commenced employment in the Service on 1 June 1979 as a Fireman. In the latter part of his career he held a number of appointments within the First Division of the Service. He had periods of service as ADFO. He was appointed acting DFO 1 September 2012 to 2 November 2012 and 30 April 2015 to 30 June 2015; DFO from 4 February 2016 onwards, interspersed with periods as acting ACFO (14 March 2016 to 31 December 2016, 1 July 2017 to 1 September 2017, 22 September 2017 to 31 December 2017, 1 January 2018 to 23 October 2018, 5 February 2019 to 28 June 2019, 1 July 2019 to 30 September 2020).

12. As it transpired, the principal rival of the appellant for appointment as acting DCFO in 2019 and 2020 was Mr Mervyn Layne. Mr Layne was appointed to the post of DFO on 8 February 2016, four days after the appellant. The appellant was therefore senior to Mr Layne in that post. However, unlike the appellant, in 2015 Mr Layne was placed on an Order of Merit List, which was used as a basis for appointment of officers to act up in the post of DCFO in 2016 and 2017. After this time, the 2015 Order of Merit List ceased to be operative.

13. Mr Layne was appointed as acting DFO 30 April 2011 to 30 June 2011 and 1 July 2012-7 September 2012; as acting ACFO 9 March 2013-16 March 2013, 22 March 2013-18 April 2013, 25 September 2013-13 March 2016, 1 May 2017-1 September 2017 and 22 March 2018-3 June 2019; as acting DCFO 15 August 2016-8 November 2016, 2 October 2017-24 November 2017 and 3 June 2019 onwards.

14. The post of DCFO became vacant with effect from 18 March 2019, so that an acting appointment fell to be made. No advertisement of that vacancy for an acting appointment as DCFO was posted at that time.

15. Instead, by memorandum dated 18 March 2019 from the CFO at that time, Mr Gopaul, to the Director of Personnel Administration for the Commission (“the Director”), the CFO recommended Mr Layne for appointment as acting DCFO. He noted that Mr Layne had developed his career in the administrative sector of the Service from an apprentice to the period he acted as DCFO on merit; he had commanded all divisions and sections within the Service and had always performed with distinction; and he had successfully completed numerous training courses overseas. It appears that pursuant to this recommendation Mr Layne assumed the position of acting DCFO on about the same date and continued in that role until about early May 2019.

16. Notice of the need to appoint an acting DCFO was posted at fire stations on 6 May 2019, inviting applications by 17 May 2019 “for consideration subject to the approval of [the Commission]”. The notice stated that all applicants “must satisfy the requirements in accordance with regulation 158 of [the Regulations] and the ... Job Description”.

17. The Job Description for the acting DCFO post explained that the job required the incumbent to manage the day-to-day operations of the Service. Under the heading “Education, Skills & Specialised Techniques” it set out a list, including “Brigade Command Course ... or equivalent”, “sound managerial skills”, “sound communication skills” and so on; under the heading “Learned Disciplines” there was another list, including items such as “working knowledge of first aid practices and emergency care” and “expert knowledge of rescue tactics and techniques”; and under the heading “Experience” it stated “Sixteen (16) years experience in the Fire Service including at least six (6) years at a senior managerial/administrative level” (the Board refers to the latter part of this as “the experience criterion”).

18. The relationship between the notice of vacancy of 6 May 2019 and the recommendation of 18 March 2019 was not explained in the evidence filed by the respondents.

19. On 6 May 2019, in response to the notice of vacancy, the appellant applied for appointment as acting DCFO. His application was not forwarded to the Commission. By memorandum from the CFO dated 23 May 2019 the appellant was informed that he was not considered suitable as he did not possess the necessary qualifications, “namely successful completion of the International Brigade Command Course as stipulated by the job specification”.

20. In about May 2019 Mr Layne was again appointed to the post of acting DCFO. The appellant was not informed of this and was not given an opportunity to make representations. Mr Layne had completed the International Brigade Command Course (“IBCC”) in 2013.

21. On 23 August 2019 the appellant successfully completed the IBCC at the Fire Service College in the UK.

22. By a memorandum dated 2 January 2020 the CFO, purporting to act pursuant to regulations 154, 155 and 158, recommended Mr Layne for appointment as acting CFO and asked for the approval of the Commission for that appointment. The CFO repeated that request by a further memorandum dated 28 February 2020.

23. In a memorandum dated 30 January 2020 the CFO acknowledged that the appellant was now eligible for the post of acting DCFO. It appears, therefore, that the CFO accepted that the appellant satisfied the experience criterion, on the basis that the periods of his operating as ADFO should count towards the relevant six year period.

24. At a meeting on 28 April 2020 the Commission considered the recommendation of the CFO and agreed to appoint Mr Layne as acting DCFO. It noted that the appellant had been passed over for appointment in May 2019 because he did not have the IBCC and did not satisfy the experience requirement of at least six years at a senior managerial/administrative level. Although the appellant had by this time acquired the IBCC, the Commission considered that he still did not have six years' experience at a senior managerial/administrative level to satisfy the experience criterion. The Commission took this to mean experience in the office of DFO or higher, so that the appellant's service as ADFO did not count.

25. On 1 December 2019 the appellant wrote to the CFO to complain that he had been passed over for the post of acting DCFO in favour of Mr Layne and asked to be reconsidered as he had acquired the IBCC in August 2019. The appellant did not receive any response to his complaint. It does not appear that it was passed on to the Commission. He continued to perform his duties as the officer in charge of the San Fernando division.

26. On 1 June 2020 the appellant's attorneys issued a pre-action protocol letter to the respondents and also filed a freedom of information application.

27. By a memorandum dated 23 July 2020 the Director formally recorded that the Commission had appointed Mr Layne as acting DCFO, with retrospective effect, for the periods 2 October 2017-24 November 2017, 3 June 2019-9 July 2019 and 13 October 2019-30 June 2020; and Mr Layne was informed of this by letter also dated 23 July 2020. The appellant was not provided with a copy of this memorandum.

28. The appellant was not satisfied with the response to his attorneys' pre-action protocol letter and on 7 August 2020 issued the present proceedings seeking, among other things, declarations that the decision of the Commission continuously to bypass the appellant for appointment as acting DCFO in favour of Mr Layne was unlawful, that the CFO has breached regulation 155, that the appellant has been treated unfairly in breach of the principles of natural justice, that the appellant is senior to Mr Layne and is qualified and eligible to be considered for appointment as acting DCFO, and that the appellant's rights under section 4(b) and (d) of the Constitution had been breached; an order of mandamus directing the respondents to reconsider the appellant's application for appointment as acting DCFO; and damages for breach of his constitutional rights.

29. As mentioned above, the appellant has now retired from the Service.

The decisions of Mohammed J and the Court of Appeal

(a) Mohammed J

30. Mohammed J delivered her judgment on 28 June 2021.

31. The appellant submitted that the term “experience” in regulation 158 was a reference to seniority, and that the respondents should have recognised that he was senior to Mr Layne. He also sought to rely upon old regulation 26. The judge rightly rejected these submissions. It is not necessary to say more about them.

32. The appellant complained that the process of adoption of the 2015 Order of Merit List was unfair to him. The judge dismissed this complaint. It was not pursued on the appeal to the Board and it is not necessary to say more about it.

33. The judge held that the appellant had failed to make out a prima facie case of unfair treatment prior to August 2019, when he obtained the IBCC qualification. Up to that point there had been no prospect that the appellant could be appointed, because holding the IBCC was a requirement of appointment.

34. However, the judge found that after August 2019 the appellant was capable of being appointed as acting DCFO. There was confusion in the evidence filed by the respondents as to what counted as senior management experience, as called for by the experience criterion in the Job Description. The rationale underlying how the dividing line between management experience and senior management experience was not explained by them. According to one account, the dividing line was that between offices in the First Division and offices in the Second Division of the Service, in which case the appellant’s time as ADFO counted and by March 2019 he did have the requisite experience. According to another account, the dividing line was to be drawn above ADFO, to include the office of DFO and higher, in which case the appellant did not have the requisite senior management experience in March 2019 or up to judgment. In the judge’s view, consideration of regulation 9 supported the former view, as did the CFO’s contemporaneous memorandum of 30 January 2020. Therefore the judge concluded that the former view was correct and that the appellant became eligible after August 2019 to act in the office of DCFO.

35. The judge thought that after August 2019 the Commission still had not appointed anyone to act in that office, and she held that the CFO failed to follow the procedure in regulation 155 as he failed to notify the appellant of the available position so as to give

him an opportunity to make representations to the Commission (para 119). However, this did not constitute a breach of the appellant's right to protection of the law under section 4(b) of the Constitution because he could apply for judicial review, which was an effective remedy in the circumstances for the unfair and unlawful treatment to which he had been subjected (paras 121-123).

36. There had been a breach of the appellant's right to equality of treatment under section 4(d) of the Constitution after August 2019, because both the appellant and Mr Layne had the IBCC and the requisite six years' senior managerial/administrative experience to satisfy the experience criterion, but only Mr Layne was put forward for appointment as acting DCFO while the appellant was not considered to be eligible (para 144). The respondents were unable to justify this discriminatory treatment (para 147).

37. In the period after August 2019 there had also been a breach of a legitimate expectation held by the appellant that he would be treated by the CFO and the Commission in accordance with regulations 154 to 158, because in breach of regulation 155 the CFO did not notify him of the acting DCFO post in advance so that he could make representations and did not allow him the requisite seven days under regulation 155(3) to make representations (paras 154-156).

38. The judge therefore made declarations regarding unlawful conduct by the CFO and the Commission in the period after August 2019 and directed them to reconsider the appellant's application for appointment as acting DCFO within 28 days. She also made a declaration that there had been a breach of the appellant's right to equality of treatment under section 4(d) of the Constitution and ordered the Attorney General to pay the appellant damages for breach of that provision, to be assessed.

(b) The Court of Appeal

39. The respondents appealed and the appellant cross-appealed in relation to the judge's ruling in respect of the period before August 2019. The Court of Appeal (Moosai JA, Pemberton JA and Lucky JA) allowed the respondents' appeal and dismissed the cross-appeal. Pemberton JA gave the sole substantive judgment, with which the other members of the court agreed.

40. As regards the period up to August 2019, the Court of Appeal upheld the decision and the main part of the reasoning of the judge, holding (para 81) that the appellant did not satisfy "the threshold eligibility criteria", in that he did not hold the IBCC qualification and (departing from the judge regarding what level of post in the First Division would qualify) he did not have the requisite number of years' service to satisfy the experience criterion in the position of DFO or above (see also para 84). Accordingly, the appellant's cross-appeal was dismissed.

41. As regards the period after August 2019, Pemberton JA observed that the respondents' appeal depended on what qualified as "senior managerial/ administrative experience", that is to say on the experience criterion (para 91). She again characterised this as a question of eligibility (paras 97-99, 105 and 107). In her view, the judge had erred in her assessment that in the period after August 2019 the appellant satisfied the requirement in the Job Description of six years' experience at this level, in particular by relying on regulation 9 to resolve the inconsistency in the respondents' evidence on this point (para 34 above). Pemberton JA proceeded on the basis that the alternative interpretation put forward by the respondents was correct, so that only experience as DFO or above counted and the appellant could therefore not show that he satisfied the experience criterion. Since the appellant was not eligible for appointment, he could have no legitimate expectation that regulation 155 should be applied in relation to him, nor that he should have been considered for appointment.

The issues in the appeal

42. The appellant now appeals to the Board. The issues which arise on his appeal may conveniently be stated as follows:

- (1) Was the appellant eligible to be considered for appointment as acting DCFO in the periods running from 18 March 2019, 6 May 2019, 23 August 2019 or April 2020?
- (2) Was the decision to appoint Mr Layne as acting DCFO from 18 March 2019 and again in the period after that without the CFO affording the appellant the opportunity to make representations to the Commission and without recommending the appellant for appointment unlawful?
- (3) Did the treatment of the appellant by the CFO and/or the Commission breach his right to protection of the law under section 4(b) of the Constitution or his right to equality of treatment under section 4(d) of the Constitution?

Analysis

(1) Eligibility for appointment

43. In the Board's view, this appeal turns essentially on the interpretation and operation of regulations 154 to 158, with reference to the appellant and the post of acting DCFO.

44. The basic scheme of those provisions is that consideration of “eligible fire officers” for promotion and their appointment by way of promotion are matters for the Commission. The function of the Commission to make the appointment is explicit in regulation 155(1), which falls to be read alongside regulation 158(1). Accordingly, the promotion of an officer to the role of acting DCFO in this case was for the Commission.

45. The CFO may make a recommendation to the Commission as to who should be appointed: see regulations 154(1), 155(3) and (5) and 156. (It seems that the CFO has a discretion whether to make a recommendation or not: see the words “any recommendations” in regulation 155(3); but the Board does not have to decide this point on this appeal). A recommendation is just that, a recommendation. The Commission is not obliged to accept it.

46. Under regulation 155(1), where an acting appointment falls to be made, the CFO is obliged to notify “all eligible fire officers”. The purpose of this is to alert all such officers to the fact that the role is available, to give them the opportunity to apply for it and, further, to give them the opportunity “to make representations in respect of that acting appointment” (see regulation 155(3)).

47. In the Board’s view, although the term “eligible fire officer” is not itself defined in regulation 146, it is a composite of terms which are defined in that provision and its meaning is determined by regulation 146 by reading the definition of “eligible officer” together with the definition of “fire officer”: see para 6 above. In the context of the Regulations it would be confusing and misleading to read the term “eligible fire officer” in any other way, and there is no other frame of reference which is available and appropriate to give it any other meaning. It means a fire officer who satisfies the qualifications of an office. The qualifications of an office are those stipulated in regulation 9.

48. Mr Rowan Pennington-Benton, for the respondents, who did not appear below, rightly accepts that this is the correct interpretation of the term “eligible fire officer” in the relevant regulations. This is a departure from the way in which the respondents presented their case to the judge and the Court of Appeal.

49. On this interpretation of the Regulations, it is clear that the appellant was an “eligible fire officer” at all material times, and in particular from March 2019 onwards. He had the qualifications in regulation 9.

50. The judge and the Court of Appeal therefore fell into error in holding that the appellant did not qualify as an “eligible fire officer”. Mr Pennington-Benton accepts this. They did so on the basis of an erroneous assumption that in order to be an “eligible fire officer” the appellant had to satisfy requirements set out in the Job Description.

51. The appeal therefore succeeds in relation to issue (1).

52. Pemberton JA, in the Court of Appeal, at para 101, endorsed a comment made in *Ian Green v Public Service Commission* CA Civ P025/2017, emphasising that specifications, whether set out in job specifications or in regulations, are important, since “the work of Service Commissions would be chaotic if due and consistent regard were not paid to them”. In doing so, however, she misinterpreted the term “eligible fire officer” and wrongly equated qualifications as specified in a job specification (in this case, the Job Description) with those specified in the relevant regulation (regulation 9).

53. In making this general comment, Pemberton JA also appears to have overlooked the way in which the Regulations make provision to enable the Commission and the CFO to structure decision-making in relation to appointments and promotions. Regulation 158(1) refers to a number of general factors, without giving them specific content or ranking them in terms of weight. Regulation 158(3) identifies relevant considerations in more detail but again does not rank them in terms of weight. However, regulation 147 of the Regulations states that “The Commission may determine – (a) forms to be used to expedite the procedures as prescribed in this Part; (b) the manner by which interviews for appointment to an office are to be conducted”. Regulation 158(3)(h) provides that, when making an appointment, the Commission shall take into account “any specific recommendation of the Permanent Secretary or [CFO] for the filling of the particular office”.

54. The Board did not receive submissions about the effect of these provisions, which do not seem to have been operated in the present case. But the Board observes that they appear to allow at least some scope for the Commission to issue forms which give specific detail about what may be required and to give weightings to such matters as are specified, and for the CFO to make specific recommendations about what is required for a particular post. The Board does not have to decide in this case whether it would have been open to the Commission to specify in a job application form that, say, it was a mandatory requirement for an applicant for the acting DCFO role to hold an IBCC qualification; at the least, the Commission could have indicated that it was a factor of considerable weight. It seems that the Job Description in this case was devised by the CFO, so putting it at its highest the only status it could have had would have been to set out a set of specific recommendations made by him, which the Commission was not obliged to accept and apply, but which would have constituted matters which it should bring into account when deciding whom to promote.

55. The Board makes two further observations. First, the Job Description did not in terms make clear that holding the IBCC or having a particular level of experience was a minimum qualification rather than something which was desirable for an applicant to have. They were set out alongside a long list of other desirable qualities, none of which appeared to be of a kind which one would think would be an absolute disqualification

if an applicant did not have it but was otherwise eminently well qualified for appointment to the role (eg “sound counselling skills”, “intermediate skills in applying First Aid”). It is implicit that in operating the relevant regulations governing appointments and promotions the CFO and the Commission are obliged to act fairly, and in particular are obliged to give fair notice of matters which will bear upon a decision whether to appoint an applicant, including by indicating more clearly than was done in the Job Description if any matter was to be treated as an absolute requirement (assuming that the Commission had the power to impose such a requirement).

56. In that regard, the Board refers to *R v Secretary of State for the Home Department, Ex p Doody* [1994] 1 AC 531, a case which arose in the different context of exercise of an administrative power to release a person serving a prison sentence, but which contains well-known guidance given by Lord Mustill which the Board considers is relevant, with due adaptation, in the present context. At p 560 Lord Mustill said that where legislation “confers an administrative power there is a presumption that it will be exercised in a manner which is fair in all the circumstances”; “Fairness will very often require that a person who may be adversely affected by the decision will have an opportunity to make representations on his own behalf ... before the decision is taken with a view to producing a favourable result”; and “Since the person affected usually cannot make worthwhile representations without knowing what factors may weigh against his interests fairness will very often require that he is informed of the gist of the case which he has to answer”. In the present context, eligible fire officers are given an express right to make representations as to why they should be appointed (regulation 155(3)), and to do that effectively they need to have fair notice of the factors which are going to bear on the appointment decision.

57. Secondly, and in any event, in the Board’s view the specification in the experience criterion in the Job Description of the level of experience required “at a senior managerial/administrative level” was too uncertain as to its meaning for it to be treated, in fairness, as anything other than a general consideration, as distinct from an absolute requirement (as the judge and the Court of Appeal took it to be). Although the Court of Appeal was critical of the interpretation the judge gave to that phrase, it itself did not give satisfactory reasons to justify the contrary interpretation which it favoured. The contemporaneous evidence indicates that no one had a clear idea at the relevant time of what it did mean. No doubt in deciding on the appointment, having regard to the seniority of the role, the Commission could give weight to the degree of senior management experience possessed by an applicant, with the weight to be given increasing depending on the level of seniority and the length of the experience; but, contrary to the approach of the Court of Appeal, this specified requirement could not be treated as an absolute cut-off affecting the appellant, so as to rule out his appointment as acting DCFO.

(2) The lawfulness of the appointment of Mr Layne as acting DCFO without consideration of the appellant

58. Mr Pennington-Benton submitted that (i) only a person recommended for appointment by the CFO pursuant to regulations 154(1), 153(3) and 156 could be appointed by the Commission and, linked with this, (ii) the representations to be made by an applicant pursuant to regulation 155 were for the consideration of the CFO alone. Accordingly, he maintained that there had been no breach of regulation 155, because in compliance with regulation 155(3) the CFO had allowed a period of seven days to elapse after the acting DCFO job was advertised before he sent his recommendation to the Commission.

59. The Board does not accept these submissions, which cannot be reconciled with what the Regulations provide. The structure of the scheme under the Regulations has to be borne in mind. The Commission is the body responsible for making an appointment. The CFO cannot control the Commission in the exercise of that function and has no power to exclude any eligible fire officer who applies for a post from being considered for appointment by the Commission. The CFO only has a power to make a recommendation as to whether a candidate should be appointed. On the other hand, the CFO is in charge of the Service and has direct contact with its officers, so he has a role to play in the practical operation of the scheme when a post becomes vacant and an appointment has to be made. The scheme is supposed to work as follows.

60. Where an acting appointment falls to be made by the Commission, the CFO has to notify all eligible fire officers: regulation 155(1). After giving the requisite notice, the CFO has to allow a period of at least seven days for fire officers who wish to seek appointment to make representations as to why they should be appointed: regulation 155(3). In the Board's view, fairness requires that when the notice is given it also explains that there is such an opportunity to make representations to be taken into account by the CFO and the Commission (see below), the time-frame in which they may be made, and gives a reasonable indication of the factors which will be treated as relevant to the appointment so that any applicant has a fair opportunity to make their representations in an effective way: see the discussion of *Doody*, above.

61. Representations are to be made by an applicant for the post to the CFO, as regulation 155(4) makes clear. When representations are received within the relevant period, the CFO is obliged to do two things: (i) he has to consider the representations in order to decide whether to recommend that applicant for appointment to the role (see regulations 154(1), 155(3) and (5) and 156); and (ii) he also has to "forward the representations in their original form to the Director", ie the official acting on behalf of the Commission (regulation 155(4)). This second obligation is imposed to ensure that the representations are passed to the Commission for its consideration when exercising its consideration and appointment function pursuant to regulation 158. The first obligation is also directed, ultimately, to the Commission's exercise of that function,

because in making his recommendations the CFO has to ensure that they “are based on the criteria prescribed in regulation 158”: see regulation 154(1).

62. Unfortunately, in this case there has been a wholesale failure to operate the scheme in this way. In March 2019, when it was appreciated that an appointment of acting DCFO fell to be made, no notice was given to “all eligible fire officers” (a category which included the appellant). Mr Layne was appointed to the role without the appellant being told that an appointment was to be made. Mr Pennington-Benton maintained that Mr Layne was not appointed at this time, but the Board does not accept this. The memorandum of 18 March 2019 (para 5 above) is in clear terms and no satisfactory evidence has been adduced by the respondents to explain it.

63. On 6 May 2019 the CFO gave notice that an appointment was to be made to the role of acting DCFO: para 16 above. This notice was given pursuant to regulation 155(1). It included the Job Description, which the Board has discussed above. However, the notice just stated a deadline for applications and did not explain about the opportunity for representations to be made, as fairness required (see para 60 above). The appellant was therefore not given a full and fair opportunity to make representations in support of his application. Further, at this time the Commission was not even informed by the CFO about the appellant’s application and so was completely disabled from considering it before Mr Layne was appointed to the role.

64. Also, as explained above, on a proper interpretation the Job Description did not specify the IBCC or the experience criterion as mandatory requirements which had to be satisfied, so in fairness it was not thereafter open to the CFO or the Commission to treat them as such.

65. On 1 December 2019 the appellant wrote to the CFO to complain about being passed over for appointment as acting DCFO. These representations also were not passed to the Commission. In the Board’s view, in light of the failures to operate the appointment regime up to that time and the impact that this had had to disable the Commission from fulfilling its function to consider the appellant’s application, fairness required the CFO to pass the appellant’s complaint to the Commission for its consideration.

66. In April 2020 the role of acting DCFO was again treated as having become vacant so that, once more, an appointment to that position fell to be made and the CFO came under an obligation under regulation 155(1) to notify all eligible fire officers of this, so that they could apply. He failed to do so. Instead, Mr Layne was again appointed to the position without the appellant having any opportunity, as he was entitled to have, to apply or to make representations (both to the CFO and the Commission) as to why he should be appointed.

67. The appeal therefore succeeds in relation to issue (2).

(3) Breach of section 4(b) or section 4(d) of the Constitution

68. In the Board's view, the failures identified above on the part of the CFO and the Commission to operate the appointment regime as they should have done, so that the appellant had an opportunity to be considered for appointment by the Commission in March 2019, May 2019, after August 2019 and in April 2020, constituted a breach of the appellant's right to the protection of the law under section 4(b) of the Constitution. The appointment regime in the Regulations included a series of rights for the appellant which were supposed to protect his interests with regard to the possibility of appointment as acting DCFO, and as a result of the breaches of those rights his relevant interests were detrimentally affected in complete denial of that protection.

69. The reasons given by the judge to dismiss the appellant's claim of breach of section 4(b) of the Constitution (para 35 above) cannot be sustained. The breaches of the appellant's rights were unknown to him at the time and so could not have been corrected by bringing judicial review proceedings. When he complained in December 2019 he still did not have a complete picture of what had happened. His rights were breached again in April 2020 without his knowledge. He cannot be criticised for not commencing proceedings earlier than he did. By the time he brought this action, there was no possibility of his being placed in the position he should have been in under the Regulations with respect to having the opportunity of being considered for appointment as acting DCFO. The only remedy available in judicial review was some form of declaratory relief, which would not constitute a "prompt and effective legal remedy" in respect of the detriment he has suffered as a result of the breach of his rights under the Regulations (ie an opportunity to be considered for appointment as acting DCFO and to earn a higher salary in that role): see *Charles v Attorney General of Trinidad and Tobago* [2022] UKPC 49; [2023] 1 WLR 177, paras 76-83.

70. Therefore, in the Board's judgment, the appellant's right to the protection of the law under section 4(b) of the Constitution has been breached. The appeal succeeds to this extent in relation to issue (3).

71. This is a case in which the appellant is entitled to claim damages, to be assessed, in respect of that breach. An important factor in assessing damages will be how likely it was that Mr Layne would have been appointed as acting DCFO even if the appellant had had the opportunity to be considered as explained above. The Board can make no judgment about that. The case has to be remitted to the High Court. The parties are invited to make representations as to the form of the order which the Board should make.

72. It is unnecessary for the Board to determine whether there was also a breach of the appellant's right to equality of treatment under section 4(d) of the Constitution. This claim adds nothing to the claim regarding breach of section 4(b) of the Constitution, which the Board has upheld. The Board heard no distinct submissions in relation to section 4(d). Since, according to the analysis under issue (2) above, there has been a straightforward failure to apply the law in the Regulations in various respects, so as to deny the appellant the opportunity of being considered for appointment as acting DCFO, and no part of that analysis depends upon a comparison with the position of Mr Layne (other than to say that Mr Layne's rights under the appointment regime were not breached, whereas the appellant's were), it is not obvious that there has been a breach of the appellant's right under section 4(d). In the circumstances, the Board does not consider it appropriate to allow the appeal in relation to section 4(d).

Conclusion

73. The appeal is allowed to the extent set out above. The appellant's rights under the Regulations were breached, with the result that he was denied a fair opportunity to be considered for appointment by the Commission as acting DCFO. In consequence, the appellant's right under section 4(b) of the Constitution to protection of the law has also been violated. He is entitled to have an assessment in the High Court of what, if any, damages should be paid in respect of that breach of section 4(b).