



Easter Term
[2026] UKPC 15
Privy Council Appeal No 0069 of 2024

JUDGMENT

**Avaria Niles (Respondent) v Judicial and Legal
Service Commission and another (Appellants)
(Trinidad and Tobago)**

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

before

**Lord Sales
Lord Briggs
Lord Burrows
Lady Simler
Sir Adrian Colton**

**JUDGMENT GIVEN ON
16 April 2026**

Heard on 16 February 2026

Appellants

Peter Knox KC

(Instructed by Charles Russell Speechlys LLP (London))

Respondent

Ramesh Lawrence Maharaj SC

Robert Strang

(Instructed by Sheridans Solicitors LLP (London))

SIR ADRIAN COLTON:

Introduction

1. This appeal arises from two disciplinary charges of misconduct preferred by the first named appellant, the Judicial and Legal Service Commission of Trinidad and Tobago (“the Commission”), against a State Solicitor in the Chief State Solicitor’s Department (“the respondent”). The charges relate to her failure to attend court in a High Court proceeding. On 30 September 2022, the respondent was granted *ex parte* leave to seek judicial review of the Commission’s decision to prefer the charges. On 4 October 2023, following an inter-partes hearing, the High Court set aside the grant of leave and struck out the respondent’s claim for judicial review and for constitutional relief in *Niles and The Judicial and Legal Service Commission and Attorney General of Trinidad and Tobago* CV2022-02851. On 27 February 2024, the Court of Appeal of Trinidad and Tobago allowed the respondent’s appeal against the setting aside of leave and the dismissal of her related constitutional claim in *Niles and Judicial and Legal Service Commission and The Attorney General of Trinidad and Tobago* Civil Appeal No S295/2023. The appellants now appeal that decision before the Board.

Statutory framework

2. Before considering the factual background to this case it is useful to set out the statutory framework governing the relevant disciplinary charges. The Commission was established by section 110(1) of the Constitution of the Republic of Trinidad and Tobago (“the Constitution”).

3. The Commission is vested with the power to exercise disciplinary control over the respondent by virtue of section 111 of the Constitution and section 3(3) of the Judicial and Legal Service Act, chapter 6:01.

4. Section 129(1) of the Constitution provides that:

“129. (1) Subject to subsection (3), a Service Commission may, with the consent of the Prime Minister, by regulation or otherwise regulate its own procedure, including the procedure for consultation with persons with whom it is required by this Constitution to consult, and confer powers and impose duties on any public officer or, in the case of the holder of an office referred to in section 111(2), a Judge or on any authority of the Government, for the purpose of the discharge of its functions.”

5. By Gazette Notice No 358 published in the Trinidad and Tobago Gazette Vol 23, No 51, dated 23 February 1984, the Commission adopted the Public Service Commission Regulations, chapter 1:01 governing the discipline of public officers which are at the heart of this appeal.

6. It is to be noted that before 2000 decisions of the Commission were protected from legal scrutiny by an ouster clause under section 129(3) of the Constitution. The ouster clause was revoked by Act No 43 of 2000.

7. The key provisions for the Board's consideration are contained in Chapter VIII of the Regulations (regulations 84–114) which prescribe the applicable procedures in relation to "Discipline."

8. Regulation 84 provides that:

"84. An officer who is alleged to be guilty of misconduct or who is alleged to be guilty of indiscipline by failing to comply with any regulation, order or directive for the time being in force in the Ministry or Department to which he is assigned, is liable to disciplinary proceedings in accordance with the procedure prescribed in these Regulations."

The respondent is an "officer" for the purposes of the Regulations.

9. Regulation 87 provides that the Permanent Secretary or Head of Department shall report any case not covered by these regulations to the Director and the Commission may issue instructions as to how the case shall be dealt with and the case shall be dealt with accordingly.

10. Regulation 2 provides that:

"'Director' means the Director of Personnel Administration".

11. Central to the consideration of this case is regulation 90 which provides where relevant:

"90. (1) Where a report or allegation of indiscipline or misconduct by an officer is received ... the Permanent Secretary or Head of Department shall report the matter to the

Director for the attention of the Commission and concurrently warn the officer in writing of the report or allegation of indiscipline or misconduct.

(2) An investigating officer shall be appointed by the Director from the Public Service Investigations Unit to investigate the report or allegation.

(2A) An investigating officer may also be appointed by a Permanent Secretary or Head of Department of the Ministry or Department to which the officer is assigned and shall hold an office in a grade higher than that of the officer.”

12. The Board notes paras (2) and (2A) in regulation 90 were introduced by the Public Service Commission (Amendment) Regulations 2008. Prior to the amendment regulation 90(2) read as follows:

“90. (2) The investigating officer shall be appointed from the Ministry to which the officer is assigned and shall hold an office in a grade higher than that of the officer against whom the allegation has been made.”

13. Regulation 90 then sets out the procedure for investigation:

“(3) The investigating officer shall, within three days of his appointment, give the officer a written notice specifying the time, not exceeding seven days from the date of the receipt of such notice, within which he may, in writing, give an explanation concerning the report or allegation to the investigating officer.

(4) The investigating officer shall require those persons who have direct knowledge of the alleged indiscipline or misconduct to make written statements within seven days for the information of the Commission.

(5) The investigating officer shall with all possible dispatch but not later than thirty (30) days from the date of his appointment, forward to the Director of Personnel Administration for the information of the Commission an investigating officer’s report

consisting of the original statements and all relevant documents together with his own report on the particular act.

(5A) Where the Commission considers that the circumstances before it warrants an extension of time, the period referred to in subregulation (5) may be extended by a period not extending thirty days.”

14. Regulation 90 continues:

“(6) The Commission, after considering the report of the investigating officer and any explanation given under subregulation (3), shall decide whether the officer should be charged with an offence, and if the Commission decides that the officer should be so charged, the Commission shall, as soon as possible, cause the officer to be informed in writing of the charge together with such particulars as will leave the officer under no misapprehension as to the precise nature of the allegations on which the charge is based.”

15. The regulations go on to set out the procedure after an officer is charged leading to the appointment of a Disciplinary Tribunal.

16. Regulation 98(1) provides for the procedure at the hearing by a Disciplinary Tribunal of a charge of alleged misconduct.

In particular, 98(1)(a) provides that the officer shall:

“be given full opportunity to defend himself.”

98(1)(c) provides that:

“Before the case against the officer is presented, the officer may submit that the facts alleged in the charge are not such as to constitute the offence with which he is charged, and the disciplinary tribunal shall make a report of the submission to the Commission for its decision.”

98(1)(d) provides for representation.

17. Regulation 98(2) provides that:

“Nothing in this regulation shall be construed so as to deprive the officer from at any time making a submission that the facts disclosed in the evidence do not support the charge.”

18. Regulation 102(1) provides:

“The disciplinary tribunal shall make a report to the Commission, and the report shall contain its findings of fact and an expression of its opinion as to the meaning and value of the facts found, together with the record of the proceedings required by regulation 98(1)(e).”

19. Provision is made for an appeal process. Section 132(1) of the Constitution, regulation 107 and the Public Service Appeal Board Regulations provide for appeals to the Appeal Board. Regulation 5 of the Appeal Regulations provides that any appeal to the Appeal Board shall be by way of rehearing.

20. The several time limits indicate that the Regulations clearly anticipate an expeditious investigation.

The factual background

21. On 4 February 2021, the respondent applied for vacation leave from 1 March to 23 April 2021. Before the application was decided she was informed by the High Court on 23 February 2021 that a case she was dealing with was listed for hearing on 3 March 2021. She maintained she was entitled to vacation leave on that date. On 2 March 2021, she was informed by her supervisor that she was to attend court the next day and was warned that if she failed to do so it would be considered a breach of discipline. The respondent did not attend at the hearing. After the hearing, she tendered a sick leave application which it is alleged was an attempt to evade her duty to attend court and to comply with a lawful instruction.

22. Pursuant to regulation 90 the respondent was served with a warning notice on 24 March 2021. The notice referred to a report by her supervisor of indiscipline and/or misconduct arising from her failure/refusal to attend court on 3 March 2021. In accordance with the regulations, the notice informed her that the report was forwarded to the Director for consideration as to whether disciplinary charges should be preferred against her pursuant to regulation 84.

23. On 24 March 2021, the Chief State Solicitor also made a report of the alleged misconduct to the Director for the attention of the Commission.

24. By letter dated 16 September 2021, the Director appointed Master M Alexander of the Judicial and Legal Service, as Investigating Officer (“the First Investigating Officer”) to investigate the allegation of misconduct. The appointment was purportedly made in accordance with regulation 87.

25. On the same date, the Director informed the respondent of the appointment.

26. By letter dated 23 September 2021, the First Investigating Officer gave written notice to the respondent that she had been appointed by the Commission pursuant to regulation 87 and that pursuant to regulation 90(3) the respondent was required to provide a written explanation to the allegations within seven days.

27. By letter dated 27 September 2021, the respondent provided a written explanation to the First Investigating Officer.

28. On the same date, the First Investigating Officer informed the Commission that she was recusing herself from the investigation.

29. By letter dated 21 October 2021, the Director appointed Ms Louise Poy Wing, Senior State Counsel, from the Ministry of Energy and Energy Industries, as Investigating Officer (“the Second Investigating Officer”). This further appointment was also purportedly pursuant to regulation 87.

30. By letter dated 11 November 2021, the Second Investigating Officer, gave written notice to the respondent that she had been appointed in accordance with regulation 87 and required the respondent to provide a written explanation in respect of the allegations within seven days, and also the names of any other officers who may have knowledge or information regarding the allegations of misconduct.

31. By letter dated 11 November 2021, the respondent provided a written explanation to the Second Investigating Officer.

32. On 16 and 17 November 2021, the Second Investigating Officer sought an extension for the submission of her report, pursuant to regulation 90(5A).

33. On 14 December 2021, the Second Investigating Officer forwarded her report to the Director. The report set out the history of her appointment, together with her contact with the respondent and with relevant witnesses. It recorded the allegations of misconduct and exhibited bundles of documents which had been submitted by the respondent and the witnesses. The report summarised the contents of the documents and expressed its findings of fact in the following way:

“1. Ms Niles was aware that the matter of Ignatius Samuel was scheduled for (sic) to proceed on 3 March 2021 ...

2. Ms Niles was instructed by Mr Smart to attend court on 3 March 2021 ...

3. Ms Niles did not attend court on 3 March 2021 ...

4. Ms Niles submitted an application for two (2) days sick leave from 3 March to 4 March 2021 ...”

Each of the findings of fact referred to the documentation upon which they were based.

34. By letter dated 4 May 2022, the Commission informed the respondent that it had considered the report of the Second Investigating Officer and that it had decided in accordance with regulation 90(6) of the regulations to prefer two disciplinary charges against her.

35. In essence, the charges alleged that she had refused to attend court as instructed without reasonable excuse and that she subsequently tendered a sick leave application with intent to falsely justify her unauthorised absence from duty.

36. By letter dated 26 May 2022, the respondent wrote to the Commission denying the charges and stated the reasons for her denial.

The application for leave to apply for judicial review

37. On 9 June 2022, the respondent caused a pre-action protocol letter to be issued to the Commission to cease the proceedings against her failing which she intended to commence legal proceedings against the Commission.

38. By letter dated 15 June 2022, the Commission acknowledged receipt of the letter and stated that a response would be forwarded by 24 June 2022. No such response was received.

39. On 28 July 2022, the respondent applied ex parte for leave to apply for judicial review of the decision to prefer the charges against her. The judicial review claim was against the Commission. Leave was granted on 30 September 2022. She also claimed redress pursuant to section 14 of the Constitution against the Attorney General of Trinidad and Tobago (“the Attorney General”) on the ground that the impugned decision also breached her rights under section 4(b); 5(2)(e) and 5(2)(h) of the Constitution:

Section 14 provides:

“14. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.”

Section 4 provides:

“4. 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 ...”

Section 5 provides:

“5. (1) Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

...

(e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

...

(h) deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.”

The respondent’s case

40. Whilst the respondent’s grounds for judicial review and constitutional relief were unnecessarily diffuse and prolix, as the proceedings developed her case crystallised into the following core propositions:

(i) The Commission did not have the power to appoint either of the investigating officers in respect of her alleged misconduct under regulation 87.

(ii) The Commission did not have the power to appoint the Second Investigating Officer upon whose report the charges were preferred as it failed to comply with regulation 90(2) or 90(2)A. Neither Investigating Officer was from the Public Service Investigations Unit. They were not appointed by a Permanent Secretary or Head of Department of the Ministry or Department to which the respondent was assigned.

(iii) Following from (i) and (ii), the Commission did not have the power to lay charges based on a report of an investigating officer who had no authority to investigate.

(iv) As a consequence of the Commission’s non-compliance with the preceding statutory requirements the charges preferred against her should be quashed by the High Court on the grounds of illegality and lack of jurisdiction.

(v) Finally, a breach of her constitutional right to protection of the law under sections 4(b) and 5(2)(e) and (h) of the Constitution was asserted.

It will be convenient to describe grounds (i)-(iv) as the “irregularities.”

The judicial review proceedings

41. On 11 October 2022, the respondent filed a Fixed Date Claim Form seeking substantive relief in the proceedings.

42. By separate notices of application both filed on 14 February 2023, the Commission and the Attorney General respectively applied to set aside the grant of leave to apply for judicial review and to strike out the claim for constitutional relief.

43. The applications were made on the grounds, *inter alia*, that the matter was unsuitable for judicial review; there was no breach of the respondent’s constitutional rights; the application for judicial review was premature as there was available to the respondent an alternative specialised legislative and constitutional regime to address the substantive claim raised; and there were no exceptional circumstances to justify the remedy of judicial review given the alternative remedy available.

44. On 4 October 2023, following an inter-partes hearing, the High Court set aside the grant of leave to claim judicial review and struck out the claim for constitutional relief.

45. In summary, the High Court judge in her written judgment held, *inter alia*, that the respondent had an effective alternative remedy and that the claim was better suited to resolution within the statutory scheme established by the Regulations, rather than by the public law court.

46. On 11 October 2023, the respondent appealed to the Court of Appeal to set aside the decision of the High Court.

47. On 27 February 2024, the Court of Appeal allowed the respondent’s appeal in a lengthy written judgment.

48. Dissatisfied with the decision of the Court of Appeal, the appellants each applied for and were granted conditional leave to appeal to the Judicial Committee of the Privy Council against the Court of Appeal’s decision and subsequently were granted final leave to appeal on 11 June 2024.

Delay

49. The Board cannot help but observe that this entire process has been beset with extensive delay. After receiving the report of alleged misconduct on 24 March 2021, almost six months elapsed before the First Investigating Officer was appointed on 16 September 2021. When the Commission received the report of the Second Investigating Officer on 14 December 2021 it did not prefer the charges until 4 May 2022. The Commission did not respond to the initial pre-action protocol letter issued on 9 June 2022. Having been put on notice that leave to seek judicial review had been granted by the High Court in October 2022, the appellants did not seek to set aside the grant of leave until February 2023.

50. The Board is now dealing with an alleged offence which occurred in March 2021. The net effect of the delay has been that neither the objective of an expeditious disciplinary hearing or an efficient and effective decision by the High Court on the legal questions raised has been achieved.

The questions for the Board

51. In short, the primary question for the Board is whether the Court of Appeal erred in law in holding that the respondent met the test for securing leave to apply for judicial review and that the statutory scheme governing disciplinary proceedings did not provide her with an effective alternative remedy for her complaint.

General legal principles

52. The threshold for the grant of leave to apply for judicial review is low. Conversely, the threshold on appeal for overturning a grant of leave to apply for judicial review is high.

53. As the Board said in the judgment of Lord Stephens in *The Central Bank of Trinidad and Tobago v Maritime Life (Caribbean) Ltd* [2022] UKPC 37:

“2. It is well settled that the threshold for the grant of leave to apply for judicial review is low. The court is concerned only to examine whether the applicant has an arguable ground for judicial review that has a realistic prospect of success and is not subject to a discretionary bar such as delay or an alternative remedy: see governing principle (4) identified in *Sharma v Brown-Antoine* [2006] UKPC 57; [2007] 1 WLR 780, para 14.

The low threshold would usually not be met ‘if a court were confident at the leave stage that the legal position was entirely clear and to the effect that the claim could not succeed’: see *Attorney General of Trinidad and Tobago v Ayers-Caesar* [2019] UKPC 44 at para 2.

3. It is equally well settled that the threshold on appeal for overturning a grant of leave to apply for judicial review is high. In *Sookhan v The Children’s Authority of Trinidad and Tobago* [2021] UKPC 29 at para 6 the Board stated that if leave to apply for judicial review has been granted then the grant of leave stands on appeal ‘unless the appellate court is satisfied that it should plainly not have been granted.’ In circumstances where leave to apply for judicial review has been granted, then ordinarily the preferred course is to proceed to a hearing on the merits, unless there is some clean knockout blow. On an appeal a very powerful—even an overwhelming—case presented on behalf of an appellant ordinarily will not suffice unless it amounts to a clean knockout blow.”

The alternative remedy argument

54. Judicial review is a remedy of last resort. This is entrenched, elementary doctrine throughout the common law world. Thus, the existence of an alternative remedy can be a bar to an application for judicial review. To operate as a bar the remedy must be effective and it must be efficient in terms of cost and convenience. As a general principle judicial review should not supplant a statutory disciplinary procedure before it is completed. This principle is recognised in section 9 of the Judicial Review Act 2000 (Chapter 7:08) of Trinidad and Tobago which provides:

“9. The court shall not grant leave to an applicant for judicial review of a decision where any other written law provides an alternative procedure to question, review or appeal that decision, save in exceptional circumstances.”

55. Thus, the requirement that individuals pursue alternative remedies in preference to judicial review has both a legal and a practical underpinning.

56. In summary, the appellants contend that the scheme under the Regulations in relation to the disciplinary procedures for persons such as the respondent provide an effective alternative remedy for her.

57. It is argued, therefore, that the court should not intervene in circumstances where the regulations have provided an elaborate disciplinary scheme establishing a specialist tribunal with sufficient protections, including appeal rights. The scheme has been devised to ensure a fair, efficacious and timely resolution of disciplinary matters. The courts should not intervene in a case such as this. The disciplinary process should be completed in accordance with the scheme.

Do the regulations provide an “effective” remedy in the circumstances of this case?

58. The appellants argue that the respondent can raise the irregularities about which she complains at the Disciplinary Tribunal. They refer to regulation 92(1) which provides that if an officer “denies the charge” she is allowed “to give to the disciplinary tribunal or the Commission any explanation [she] may wish.” Specifically, under regulation 98(1)(a) on being summoned to appear at the hearing she “shall be given full opportunity to defend [herself].” Furthermore, under regulation 98(1)(c), before the case was presented, she will be at liberty to “submit that the facts alleged in the charge are not such as to constitute the offence”. By regulation 98(2) nothing can deprive her “from at any time making a submission that the facts disclosed in the evidence do not support the charge.”

59. It is further argued by the appellants that these provisions enable the Disciplinary Tribunal to determine the merits of her argument on the consequences of the suggested irregularities.

60. In the Board’s view, the Tribunal does not have the power to determine the irregularities raised by the respondent, for the following reasons. The function and power of the Tribunal are prescribed and circumscribed by the Regulations. Its remit is exclusively statutory. In contrast with the High Court, it has no inherent jurisdiction.

61. Summarising, by virtue of regulation 102(1), the function of the Tribunal is to interrogate the factual allegations against the officer concerned, to consider all the evidence presented, to resolve material contentious factual issues, to make material findings of fact, to express its opinion on the meaning and value of the facts found by it and to report accordingly to the Commission. This is the essence of the material provisions of the Regulations, with their focus on the “facts alleged” and whether the “facts disclosed” support the charge.

62. The irregularities canvassed by the respondent in her grounds for judicial review raise classic public law issues of illegality and *vires*. These lie outwith the statutory remit of the Tribunal. This is the clear meaning and import of the relevant provisions of the Regulations.

63. Although not argued in the Court of Appeal, the appellants contend that the respondent had the right to make a direct appeal against a decision to continue the charges against her under section 132(1) of the Constitution as this provides that:

“An appeal shall lie to the Public Service Appeal Board from any decision of a Service Commission ... as a result of disciplinary proceedings brought against a public officer.”

64. It is argued that it was open to the respondent to complain to the Commission about the laying of the charges against her. It is not clear under which provision this could be done. If successful, this would terminate the disciplinary process. Alternatively, if the Commission refused to dismiss the complaint, that would have been “[a decision of the Commission] ... as a result of disciplinary proceedings” founding a right of appeal to the Public Service Appeal Board.

65. The Board considers that this does not provide an effective alternative remedy. It would be incongruous for the Commission, which decided to lay the charges, to determine for itself whether it was legally permitted to do so. This would be manifestly incompatible with a cardinal rule of natural justice—*nemo iudex in causa sua*.

66. Finally, it is argued the respondent could appeal any decision made by the Commission after receiving the report from the Disciplinary Tribunal to the Public Appeal Board. Regulation 5 of the Appeal Regulations provides that:

“Every appeal to the Appeal Board shall be by way of rehearing ...”

67. It is accepted by the parties that the Appeal Board could deal with the irregularities raised by the respondent. The Board considers that it would be unreasonable to require the respondent to go through the process of all that is entailed in a disciplinary hearing, in the hope that the irregularities canvassed by her could be successfully rectified upon onward appeal on a point of law to the Appeal Board. Such a process would not constitute an effective alternative remedy.

68. For these preceding reasons, the Board can identify no basis for interfering with the Court of Appeal’s determination that the statutory scheme does not provide the respondent with an effective alternative remedy.

69. In those circumstances, the question of whether exceptional circumstances exist so as to permit a judicial review to proceed in accordance with section 9 of the Judicial Review Act 2000 does not arise.

70. It is appropriate to highlight one particular feature of the judgment under appeal. The Court of Appeal, consistently with certain judicial dicta, characterised the question of whether an effective remedy exists as one of judicial discretion. The Board considers that this requires correction. Whether an effective remedy exists is not a matter of judicial discretion but a matter of judicial evaluation or judgment. Judicial discretion may feature in circumstances where it is determined that there is an effective alternative remedy but there are exceptional circumstances to permit a challenge by judicial review in any event. Equally, the question of discretion may be relevant to remedy should the judicial review proceed.

Arguability/the leave test

71. Whilst the focus of the judicial determinations in the domestic courts was on the question of alternative remedy, the appellants raise an issue as to arguability. Does the respondent's case satisfy the basic requirement for leave to apply for judicial review of an arguable case with a realistic prospect of success? This issue is raised in light of the appellants' acceptance that the Second Investigator was not appointed by the Commission in accordance with the applicable provisions of the Regulations.

72. The issue of law thus raised is whether non-compliance with the relevant statutory requirements should give rise to invalidity as regards the Second Investigator's report.

73. In short, it is argued that irregularities identified in this case are of no significant consequence. There is no prejudice to the respondent. The Second Investigator has provided a purely factual account of the background to the charges having fully considered the respondent's account.

74. This argument further highlights that the Second Investigator holds the elevated rank of senior counsel, an officer of higher rank than that of the respondent and, further, is clearly of sufficient expertise and experience to investigate the allegations fully and competently and to report appropriately.

75. The appellants further submit that the purpose of a report from an investigator is to ensure the charges are laid on a properly informed basis. It is argued that that purpose has clearly been met in the circumstances of this case.

76. The appellants point to previous Privy Council decisions such as *Charles v The Judicial and Legal Service Commission* [2002] UKPC 34, which considered the effect of non-compliance with time limits in regulation 90. In that case the Board observed in para 12 that:

“A self-imposed fetter of such a kind [ie breaches of time limits would deprive it of its duty to enquire into misconduct] on the discharge of an important public function would seem inimical to the whole purpose of the investigation and disciplinary regime. The proposition that this was intended is also hard to reconcile with the then existence of section 129(3) precluding inquiry into procedural irregularities not of a fundamental kind ...”

Importantly, as set out above, section 129(3) was repealed in 2000.

77. The appellants also rely on cases such as *R v Chief Constable of the Merseyside Police, ex p Merrill* [1989] 1 WLR 1077 and the High Court decisions in *R (Redgrave) v Metropolitan Police Commissioner* [2002] EWHC 1074 (Admin); [2003] Po LR 17 and *R (Wilkinson) v Chief Constable of West Yorkshire* [2022] EWHC 2353 (Admin); [2002] Po LR 328 to the effect that procedural irregularity in the disciplinary context which causes no prejudice or unfairness is not a ground for judicial review. These cases dealt with delays in the service of notification of complaints under the relevant disciplinary regulations.

78. The applicable legal test is well settled, by virtue of the decisions in *R v Soneji* [2005] UKHL 49; [2006] 1 AC 340 and *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2024] UKSC 27; [2025] AC 1075. As was said at para 61 of the latter decision:

“61. The point of adoption of the revised analytical framework in *Soneji* was to move away from a rigid category-based approach to evaluating the consequences of a failure to comply with a statutory procedural requirement and to focus instead on (a) the purpose served by the requirement as assessed in light of a detailed analysis of the particular statute and (b) the specific facts of the case, having regard to whether any (and what) prejudice might be caused or whether any injustice might arise if the validity of the statutory process is affirmed notwithstanding the breach of the procedural requirement ...”

79. The Board agrees with the proposition advanced by Mr Knox on behalf of the appellants that every procedural irregularity in a disciplinary process, however immaterial or insignificant, should not enable an affected person to invoke the jurisdiction of the High Court for judicial review. The mere act of raising a procedural irregularity should not automatically result in the court granting leave for judicial review. It would be contrary to the principles for the granting of leave, particularly in circumstances where Parliament or the Constitution has provided a comprehensive scheme to deal with disciplinary matters. The courts must always be alive to the second element of the test for granting leave (arguability being the first), namely whether the case has a realistic prospect of success.

80. There are several issues with which the court must grapple in considering the consequences of the appellant's admitted non-compliance with the regulations.

81. Firstly, there appears to be no explanation as to why or in what circumstances the Commission initiated the disciplinary procedure relying on regulation 87, which plainly was on an incorrect basis. On any reading of this regulation, it is clear that it did not apply to the circumstances of this case. This raises questions about the Commission's understanding of its powers under the regulations.

82. Secondly, the Board has no information about the circumstances in which the Regulations were amended by the introduction of regulation 90(2) and 90(2A). The amendments envisaged an investigating officer being appointed by the Director from the Public Service Investigations Unit. This did not happen here. In carrying out the *Soneji* exercise, a court would be expected to investigate what was the thinking or purpose behind the creation of such a unit and why the investigator should be appointed from the Unit. Parliament clearly envisaged that a change was required in the disciplinary process. It would plainly be desirable to know what underlined the legislative choice. None of this information is available to the Board. These issues can best be resolved by full argument and receipt of appropriate evidence in the domestic court.

83. The amended regulations did preserve the power of the Permanent Secretary or Head of Department of the Ministry or Department to which the officer is assigned to appoint an investigating officer. This power was not exercised in the present case.

84. There is a dispute between the parties as to the effect of this amendment. Previously, regulation 90(2) provided that the investigating officer shall be appointed from the Ministry to which the officer is assigned. The respondent contends that the amended regulation should be read in the same way. The appellants say that the amended version does not so limit the power and would permit the appointment of Ms Wing who was employed in a different department from that of the respondent.

85. At paras 62–63 of its judgment, the Court of Appeal stated:

“62. A legitimate question in my view therefore arises, what is the effect of a breach of regulation 90(2). Secondly, can the power of issuing directions under regulation 87 permit the JLSC to bypass the statutorily recognised avenues to appoint investigating officers? It is futile to answer these questions without proper context before the hearing of the claims on their merits. What is the significance of the Public Service Investigation[s] Unit? How important is it for those officers to have conduct of such an investigation? As Nelson JA observed in *Herbert Charles v de la Bastide CvA No. 76 of 1999*, a determination whether non-compliance will result in a nullity depends upon the intention of parliament, the nature of the breach and the significance of the provision. These issues needed to be properly interrogated. Furthermore, in my view, these are important issues with a public interest in determining how the JLSC would appoint an investigating officer in these circumstances whether in compliance with the regulation 90(2) or anyone who they so desire pursuant to regulation 84B.

63. Having regard to the nature of the grant of leave, it could not have been said that this issue was plainly unarguable with no realistic prospect of success. Furthermore and importantly, the main challenge by the respondents in the court below on their application to set aside leave was on the ground that an alternative remedy existed. It was not based on arguability.”

The Board, agreeing with these passages, considers that these issues and the parties’ competing contentions should properly receive further consideration by the domestic court after full argument.

86. Summarising, the Board concludes that the respondent has satisfied the low threshold for the grant of leave to apply for judicial review and, conversely, that the appellants have not overcome the high threshold for setting aside the decision of the Court of Appeal to affirm the grant of leave. The appellants have not established a “clean knockout blow” (see para 53 above), and the appropriate course is to proceed to a substantive hearing of the respondent’s claim on its merits.

The constitutional claim

87. The respondent contends that the alleged breaches of the regulations occasioned a denial of her rights to the protection of the law under sections 4(b) and section 5(2)(e) and (h) of the Constitution. The appellants counter that the constitutional rights identified are protected by the detailed statutory disciplinary scheme and the very existence of the judicial review remedy open to her. They add that she has not been deprived of anything as a result of the disciplinary procedure. She has remained in full employment throughout.

88. Although related to the respondent's claim for judicial review, the constitutional claim requires to be considered separately in the context of an application for dismissal. The leave of the High Court is not required to pursue a constitutional claim. The test, to be contrasted with that of arguability, is whether the pleaded case discloses no grounds for bringing a claim or that it constitutes an abuse of process.

89. The Board is conscious that not every procedural irregularity in a disciplinary process, even one contained in statutory provisions, automatically gives rise to a potential claim for breach of constitutional rights.

90. That said, the Board considers that the relationship between the two claims is such as to defeat any argument that the claim for constitutional relief should be struck out. In assessing the legal consequences of the irregularities outlined in para 40 above, the domestic court could have recourse to the constitutional provisions relied upon as relevant to its consideration.

91. Furthermore, the Board notes that the question of availability of judicial review has been put in issue by the appellants. This, of itself, raises a constitutional dimension which feeds into both the alternative remedy argument and the *Soneji* exercise. All of these interconnected issues should properly be considered as a whole by the domestic court.

Conclusion

92. For the reasons given, the Board dismisses the appellants' appeal and affirms the decision of the Court of Appeal of Trinidad and Tobago.