[2014] JMSC Civ. 97

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2011 HCV 06104

IN THE MATTER OF AN APPLICATION BY KADIA RICARDO WARREN FOR AN ADMINISTRATIVE ORDER FOR JUDICIAL REVIEW

REGINA v. THE COMMISSIONER OF POLICE, ex parte KADIA WARREN

Debayo Adidepe for the Claimant

Carole Barnaby, and Gail Mitchell, instructed by the Director of State Proceedings, for the Commissioner of Police

Heard: October 11 & November 7, 2012 & May 9, 2014

APPLICATION FOR JUDICIAL REVIEW – WHETHER REFUSAL TO RE-ENLIST A JAMAICA CONSTABULARY FORCE MEMBER IS EQUIVALENT TO A DISMISSAL OF THAT MEMBER FROM HIS EMPLOYMENT WITH THE JAMAICA CONSTABULARY FORCE – NATURAL JUSTICE – LEGITIMATE EXPECTATION

Anderson, K., J

[1] This is a fixed date claim form matter which commenced through the filing by the claimant of a fixed date claim form on November 29, 2011, following upon leave having been granted to him, to apply for judicial review, on November 16, 2011.

PRELIMINARY ISSUES

[2] There are a few procedural matters which this court will briefly address, before delving into addressing the substance of the claimant's claim. The first such, is the fact

that in the claimant's fixed date claim form and thus, all subsequently filed court documents pertaining to his claim, no one has been named as a defendant to this claim. The failure on the claimant's part though, to have named someone as a defendant to this claim, although a matter of procedural error can be rectified by naming the Commissioner of Police (hereinafter referred to as 'the Compol') as the defendant. The court will do so, since the Compol was the party on whose office the fixed date claim form was served by the claimant and in its acknowledgement of service, the Director of State Proceedings (hereinafter referred to as "DSP'), as would be the customary course on a situation wherein the Compol is being claimed against, acknowledged service on behalf of the 'defendant' (though such 'defendant' is un-named in the fixed date claim form) and also, specified that they intended to defend the claim for and on behalf of the 'defendant', which is exactly what they (DSP), has done to date. In the circumstance, this court makes an order of its own motion, naming the Compol as the sole defendant to this claim. Thus, this claim is now to be titled, *inter alia*, as **Regina v the Commissioner of Police, ex-parte Kadia Warren**.

[3] The other procedural issue which was initially of concern to this court, is that the court did note, during the trial of this claim, that the claimant's application for leave to apply for judicial review was filed on September 28, 2011. The primary event which the said application for leave was seeking this court's permission to challenge, on the claimant's behalf, is the refusal of the Compol to allow the claimant to re-enlist in the Jamaica Constabulary Force (hereinafter referred to as 'the JCF'). Force Orders verifying that refusal to re-enlist the claimant, were published on January 13, 2011, this having followed on the Compol having, on November 24, 2010, made his decision to refuse to allow the claimant to re-enlist in the JCF. In addition a letter dated December 7, 2010, was addressed to Mr. Warren, informing him of the Compol's decision to refuse to re-enlist him. The claimant has given sworn evidence to this court, by means of affidavit, verifying by means of affidavit, verifying that he received said letter.

[4] There is no doubt in this court's mind therefore, that the claimant's application for leave to apply for judicial review, was filed out of time and that, no extension of time for

the filing of same, was ordered by this court, up until the dates when this matter was argued before this court, by the respective parties, during trial.

[5] The said application for leave was undoubtedly filed out of time, since rule 56.6 (1) of the Civil Procedure Rules (hereinafter referred to as 'the CPR'), states – '*An application for leave to apply for judicial review must be made promptly and in any event within three months from the date when grounds for the application first arose*.' The very wording of this rule, makes it apparent that the filing of a party's application for leave to apply for judicial review, in reality, ought as a general rule, to be made in even less than three months, not from the date when the decision which is to be challenged, is brought to that party's attention, but rather, from the date, 'when grounds for the application first arose.' In the case at hand, grounds for the claimant's application, could reasonably be argued as having first arose, on November 24, 2010 – as that was the date when the Compol actually made his decision to refuse to re-enlist the claimant in the JCF. The Compol's decision in that respect, was made official, via publication in the Force Order on January 13, 2011 ad thus, at the latest, January 13, 2011 would have been the date when, 'grounds for the application first arose.' This court, for its part, thinks that the latter of those two dates would be the operative date for that purpose, since that is the date when the Compol's decision is to be taken as being operative in law.

[6] Following on this reasoning, the claimant's application for leave to apply for judicial review, having been filed on September 28, 2011, was filed at least five months out of time. At trial therefore, this court raised the issue of delay with the parties' counsel, since, it was open to the Attorney General to have taken as a preliminary point at trial, that the court when it granted leave to the claimant, apparently did not take into account that in order for it to then have properly done so, an application for an extension of time would first have had to have been made and also, granted by this court. No such order granting any extension of time within which to apply for leave, was, at any time prior hereto, made and in fairness to this court, it must be noted firstly, that no such application was ever made to this court. Secondly, even if such an application had been made, it would not at all automatically follow that an extension of time would be granted, since, rule 56.6 (2) of the CPR states – '*However the court may extend the*

time if good reason for doing so is shown.' In addition, rule 56.6 (5) of the CPR states – '*When considering whether to refuse leave or to grant relief because of delay the judge must consider whether the granting of leave or relief would be likely to – (a) cause substantial hardship to or substantially prejudice the rights of any person; or (b) be detrimental to good administration*.' With all of this in mind, it is very clear that relief arising from delay, ought never, in a judicial review application for leave scenario, to be granted by this court, as a matter of course. Indeed, this is the approach which Jamaica's Court of Appeal has taken to matters concerning delay in the filing of court documents by a party in any appeal court matter, generally. See: **Peter Haddad v Donald Silvera** – SCCA No. 31/2003 (delivered 31 July, 2007).

[7] It was therefore open to this court, even at the trial stage of this judicial review hearing, to have refused to entertain the claimant's application for judicial review, on the basis of an issue which had become apparent to this court at the trial stage, but which was, it seems, not apparent to this court, when it, as it was entitled to done, pursuant to rule 56.3 (2) of the CPR, heard the application for leave ex-parte and thus, with only the applicant's attorney then present, granted leave, but did not make any order extending time for the claimant's application for leave to have been filed and thus pursued. Such an order was required, in order for the claimant's required application for leave to have even been properly made to this court. If therefore, leave may not properly have been granted, in circumstance wherein new material has come to this court's attention, after leave was granted, it would have been open to this court, to have, even at the trial stage, refused to entertain the claimant's application for judicial review. In that regard, see: **Ministry of Foreign Affairs Trade & Industry v Vehicles & Supplies Ltd**. – [1989 & 1991] 39 WIR 270. It should be noted carefully, that the application for leave is, by virtue of Jamaica's rules of court, a necessary precursor to the proper filing of a fixed date claim form seeking relief on the basis of judicial review proceedings. See **rule 56.3 (1) of the CPR** in that regard.

[8] In an earlier judgment of this court, as was rendered by Sykes J, it was, I believe correctly pointed out by him that the operative date when time for the application for

leave begins to expire, is the date when the grounds for the application first arose, this as distinct from the date when notice of the decision being challenged, or which it is sought to have leave to challenge, came to the attention of the party who wishes to challenge same. See: **City of Kingston Co-operative Credit Union Ltd**. **and Registrar of Co-operative Societies & Friendly Societies & Yvette Reid** – Claim No. 2010 HCV 0204. In that judgment of Sykes J., he as a judge of this court, had, on that ground, set aside an earlier ex-parte order of this court, granting leave to apply for judicial review in that same case. Also in the case – **R v. Stratford-on-Avon DC, ex-parte Jackson** [1985] WLR 1319, which is a case from England, a similar legal position was confirmed and that legal position has also been set out in the **White Book (2000) Volume 1, at paragraph SC53-14.55, pages 932 & 933**.

[9] This court though, although having raised the issue of delay in the filing of the claimant's application for leave, with the parties' counsel, from the onset of the trial and thus, having clearly been concerned about same, will not set aside the earlier ex-parte order of this court, granting leave to apply. Such would not be appropriate, since the defendant has not requested any such relief and furthermore, even through counsel, went so far as to accept the proposition of the claimant's counsel, that no prejudice to good administration arises from the claimant's delay in his pursuit of leave to apply. Furthermore, this court, from the circumstances as known to it to date, this based on the affidavit evidence which has been filed by the respective parties, does not consider that the leave to apply which was granted to the claimant would cause either substantial hardship, or substantially prejudice the rights of any person. In the circumstances, this court will now address its mind directly to the pertinent factual and legal issues, arising from the claimant's claim.

GENERAL NATURE OF CLAIMANT'S CLAIM

[10] By this claim, the claimant seeks an order of *certiorari* for the purpose of quashing the decision of the Compol as was made on July 9, 2010, 'dismissing him from the JCF by refusing to allow him to re-enlist/refusing to permit him to re-enlist in the JCF.'

[11] Before addressing, in these reasons, the grounds for the claimant's application, it is both apropos and important to note that a refusal on the part of the Compol to re-enlist a member of the JCF, just as a refusal to permit a member of the JCF to re-enlist, is not, under any circumstances, as a matter of law, to be equated with a dismissal of that member of the JCF, from, the JCF. As had been stated by Carey, J.A in – **Corporal Glenroy Clarke v The Commissioner of Police and the Attorney General for Jamaica** – [1996] 33 J.L.R 50, at paragraph 52 – '*Although the non-approval by the Commissioner of a member for re-enlistment removes that member from further service in the force it is not a dismissal*.' His Lordship, Carey J.A. went further in setting out the differences between dismissal and refusal to re-enlist, insofar as JCF members are concerned, but for present purposes, in terms of these reasons for judgment, it is not necessary for any further elaborations of same to be provided, since such will neither add to, nor detract from either the case as presented to this court by the claimant or defendant herein. This is so because, what the claimant is it seems, really challenging, is the refusal to re-enlist him in the JCF.

[12] Interestingly enough though, in his fixed date claim form, which was, with this court's permission, amended at trial, so as to thereby change to an extent, the grounds upon which judicial review relief is being sought by the claimant, the claimant is seeking to quash the decision of the Compol to dismiss him from the JCF., 'by refusing to allow or permit him to re-enlist in the JCF.' As such, from his amended fixed date claim form as presently worded, the claimant is actually seeking to quash the Compol's decision to refuse to permit/allow him to re-enlist in the JCF. This is, to this court's mind, even though somewhat inelegantly worded, tantamount to the claimant seeking to quash the Compol's decision to refuse to re-enlist him in the JCF. This court so concludes, because undoubtedly, the claimant is contending that if he had been permitted by the Compol to re-enlist, then he would have re-enlisted. As things turned out however, he was never re-enlisted, since the Compol never allowed or permitted him to re-enlist. He was, of course permitted to apply for re-enlistment, but he was never in fact allowed to re-enlist. This is therefore, the same as contending that he, the claimant, is seeking an

order of this court, bringing into this court, the decision of the Compol to refuse to re-enlist him, so that that decision will be quashed. This being the effort of that which was previously known to this court, as a *Writ of Certiorari*, but which is now to be termed as an *Order of Certiorari* – See **Section 52 of the Judicature (Supreme Court) Act**.

[13] The court is therefore, to be expected, for the purposes of this case, to decide on whether the decision of the Compol to refuse to re-enlist the claimant, ought to be brought into this court and quashed, as that is definitely the primary relief which the claimant is now seeking to obtain, based on what has been set out by the claimant in his amended fixed date claim form, as being the relief which he thereby seeks. In any event, even if I were wrong in having so interpreted and applied the wording as used by the claimant in terms of the relief being sought by him, nonetheless, this court is empowered, as part and parcel of its powers as set out in rule 56.15 (3) of the CPR, to, 'grant any relief that appears to be justified by the facts proved before the court whether or not such relief should have been sought by an application for an administrative order.' As such, if this court were to take the view, after having considered all of the relevant facts and law pertaining to this case, that the claimant is entitled to an order quashing the decision of the Compol to refuse to re-enlist the claimant, then this court, is entitled, albeit not mandated or bound, to grant such relief. This court therefore, having carefully considered the facts of this case, in this regard, has concluded that what the claimant is challenging is, to term it most appropriately, the refusal of the Compol to re-enlist him in the JCF. That refusal to re-enlist the claimant in the JCF therefore, is the primary issue which this court will further consider, for the purpose of resolving this claim.

[14] What then, are those undisputed facts surrounding the Compol's decision, refusing the claimant's re-enlistment in the JCF? The same are as follows: The applicant was enlisted on the JCF as a constable on November 23, 2002, for a term of five years. Thereafter, he applied for re-enlistment and on August 15, 2007 a recommendation was made for him to be re-enlisted for one year. On expiration of that one year period, he again applied for re-enlistment. The claimant's evidence, as

provided on affidavit, was that he had made that application in 2009, to once again be re-enlisted, in a timely manner, but that application was lost at the police office in Manchester and therefore, he had to therefore submit a further application for re-enlistment which he did and same was approved on October 21, 2009 for one year. The claimant, at the end of that one year period, made yet another application for re-enlistment, such that the applicant became due for re-enlistment on October 22, 2010. It should be noted that in one the Compol's affidavits he has deponed to 'the applicant, who is the claimant herein having been due for re-enlistment on November 22, 2010'. Clearly though, the month of November must have been erroneously there stated since re-enlistment for a year following on October 21, 2009, would have rendered the claimant's next re-enlistment as necessarily commencing, if it were to have commenced at all, as of October 22, 2010, rather than November 22, 2010, as the Compol has stated. This court takes this as being an error only and not as any attempt by the Compol to either deliberately mislead this Honourable Court, or to deliberately be untruthful to this Honourable Court, or both. As things turned out though the claimant's then pending application, in late 2010, for further re-enlistment, was not approved of and thus, to be more direct, was denied, by the Compol. It is specifically that refusal to re-enlist him, which he is now challenging before this court, by means of judicial review.

[15] While the claimant's last application for re-enlistment was pending a determination by the Compol, the claimant was suspended arising from an alleged breach by him, of the Corruption Prevention Act, on June 8, 2010. Prior to that, in 2007, the claimant had been placed on interdiction albeit that nothing further adverse to the claimant in terms of his job as a constable attached to the JCF, arose beyond that interdiction, since apparently, no disciplinary action was taken in relation to the claimant as a member of the JCF arising from the incident which led to his interdiction and furthermore, the Director of Public Prosecutions had determined that the relevant incident be addressed in the Coroner's Court, since it pertained to the death of an individual, in circumstances wherein, it was the view of the Director of Public Prosecutions, that no one was criminally responsible for the individual's death.

[16] That interdiction in 2007, led to nothing further adverse to the claimant in terms of his job with the JCF, other than that, as aforementioned, the claimant was suspended from his job with the JCF, whilst criminal charges were pending against him, under the Corruption Prevention Act. The Director of Public Prosecutions had, by correspondence addressed to the then officer in charge of the Anti-Corruption Branch of the JCF – Mr. Justin Felice (then Assistant Compol), directed that two criminal charges be laid against the claimant, pursuant to the provisions of the Corruption Act which the claimant had allegedly breached. Those charges were, to put it as simply as possible, related to soliciting a bribe and accepting a bribe in relation to his duties as a public officer. It was whilst his suspension in relation to same was pending, that the claimant's last application for re-enlistment, came before the Compol for consideration and was then denied.

[17] After his re-enlistment application was denied, the claimant was informed of that by letter. The claimant responded to same and in that response of his, which is dated January 5, 2011, stated that he was informed by letter, that his application for re-enlistment had been refused and that he was also informed of an appointment between himself and the Compol, which was scheduled for January 6, 2011 at 8 a.m. It must be stated and should be noted, that it was not the claimant who had requested that appointment. To the contrary, the same was unilaterally scheduled by the Compol and the constable, who is obliged to obey the orders of officers senior in rank to him within the JCF, was summoned to that meeting with the Compol, which the claimant had somewhat euphemistically described in that correspondence of his as being, 'an appointment'.

[18] In any event though, the claimant, who would only have been given two clear days' notice of said 'appointment'/meeting, agreed to attend same. He did so in his said letter of response to his having been notified of the Compol's decision not to approve his re-enlistment in the JCF, and to his having been notified of the unilaterally pre-scheduled 'appointment' with the Compol. It is unclear from the evidence and thus unknown to this court, whether the claimant was even informed of the reason for the

unilaterally pre-scheduled 'appointment' between the Compol and himself. What is known to this court though, is that by letter dated December 30, 2010 a Superintendent of Police in the Personnel Division of the JCF had notified a Superintendent of Police in the Manchester Division – this being the police division where the claimant was stationed and working, prior to his having been suspended, that the claimant 'is to attend an interview with the Compol at 103 Old Hope Road, Kingston 6, on Thursday, January 6, 2011 at 8:00 a.m. in respect to the refusal of his re-enlistment.' That said letter informed the said Superintendent of Police – Manchester Division, to inform Constable Warren ('the claimant') accordingly 'and confirm his attendance with this office by 3:00 p.m. Wednesday, January 5, 2011 at 978–8676. This court wishes to reiterate for emphasis though, that the evidence as led by the respective parties at trial, did not reveal whether or not the claimant was actually told of the reason for the Compol's unilaterally pre-scheduled 'appointment'/meeting with him. Accordingly, whilst there is absolutely no doubt in this court's mind that the time period afforded to the claimant to prepare for that 'appointment'/meeting, was extremely limited and thus, in and of itself, perhaps unfairly so limited (at least in terms of preparation time for same, insofar as the claimant is concerned), this court is uncertain as to whether the claimant was made aware of the reason for that meeting.

[19] If the claimant was not made aware of same, this will impact this court's consideration as to whether or not, by means of that meeting, considered along with whatever other opportunities may have been afforded to the claimant prior thereto, for him to be heard as to whether or not he should have been re-enlisted, the claimant was overall, treated fairly and afforded a fair hearing as to same. This consideration is of significant importance to the claimant in particular, because it was one of the nubs of his legal contentions before this court upon the trial of this claim, that in all the circumstances, he was not given a fair or proper hearing and that his 'rights' (presumably his right to a fair hearing) 'have been breached' (see paragraph 29 of the claimant's affidavit which was filed on November 29, 2011). Another nub of the claimant's legal contentions as were made at trial, is set out on paragraph 20 below.

WHETHER COMPOL'S REFUSAL TO RE-ENLIST THE CLAIMANT WAS UNREASONABLE

[20] The other nub concerns the grounds upon which the Compol acted, in refusing to re-enlist the claimant, or in other words, in denying the claimant's application to re-enlist. Suffice it to state though, that this court is not able to conclude, solely on the basis of the affidavit evidence which was presented to it by the respective parties, at trial, that the reasons as provided to the Commissioner by Deputy Commissioner Bent to, as to why the claimant should then have been refused re-enlistment, were not 'good reasons.' In order for this court to have properly been able to have made that determination, cross-examination of the respective deponents to the respective affidavits that were placed before this court at trial, for consideration, would have had to have been undergone. This would have been the only proper means by which this court could have lawfully determined that those grounds were spurious, or substantive and substantial (as the case may be). On the face of it, the allegations of improper overall work conduct of the claimant, over a period of time, were quite grave and could properly have been acted on by the Compol as constituting reasonable grounds for refusing to re-enlist the claimant in the JCF.

[21] On the law, as regards the need for cross-examination to be undergone where disputed affidavit evidence exists, if the court before which that evidence had been presented, is to make findings of fact in favour of one party and contrary to another, See **Edward Seaga v Western Broadcasting Services Ltd. –** [2007] 70 W.I.R. 213 and **Lascelles Chin v Ramona Chin** [2001] 58 W.I.R. 335.

[22] In the case at hand, neither party ever applied to cross-examine any of the deponents to the respective affidavits – those deponents being respectively, the claimant and the defendant. As such, it is not open to this court to properly conclude, either that the criminal charges as laid against the claimant cannot be proven (as the claimant has alleged as one of the grounds for the relief which he now seeks). Separately and furthermore, it is not open to this court to properly conclude that said criminal charges are inappropriate in law – this in circumstances wherein the Director of

Public Prosecutions has determined that such criminal charges are legally appropriate and also, as this court was informed as at the last date for trial of this claim, prior to this court having reserved judgment, that having been: November 7, 2012, such criminal charges were still then pending against the claimant in a Magistrate's Court. In such circumstances, it would be an abuse of this court's processes, to collaterally challenge the legal appropriateness of said criminal charges in a manner which could lead to the Magistrate's Court before which those criminal charges are to be tried, considering itself as bound by precedent, to follow a ruling of this court as to same, even though that ruling, if given in respect of this claim, could not possibly have any binding effect whatsoever on the said Magistrate's Court. These are the types of challenges which can only serve to bring the law into disrepute and thus, can only properly now be viewed and is so viewed by this court, as constituting an abuse of process.

[23] In any event as a matter of law, in order for this court to set aside the Compol's decision to refuse to re-enlist the claimant, in the ground that the Compol, in essence, acted unreasonably in having so done, it would have had to have been proven to this court, on a balance of probabilities, that the Compol, in having made that decision, acted in a manner in which no reasonable Compol, in those particular circumstances that obtained at the material time in this case (that being the time when the time when the Compol was deciding on whether to re-enlist the claimant), could have. This is what is known as '**Wednesbury unreasonableness**', based in the well-known and oft-cited case: **Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation –** [1948] 1K.B. 223**.**

LEGITIMATE EXPECTATION

[24] The claimant has placed before this court, as one of his grounds for the relief which he seeks, the following, as ground (ii), following on his stated ground (i), which his counsel had withdrawn during the hearing of the claimant's application. 'The applicant had a legitimate expectation that he would not be refused re-enlistment except there was good and sufficient reason for the Compol to do so having regard to the fact that this was his career and as a matter of law he himself was not free to withdraw from to

police force even if not enlisted, except in accordance with the provisions of the Constabulary Force Act and the applicable regulations.'

[25] The above-quoted ground seems to this court, to have mis-stated something. Clearly, if the 'applicant'/claimant was not re-enlisted, he would not have withdrawn himself from the police force. Once re-enlistment is refused, it is the JCF that has decided not to employ that person whose re-enlistment application is refused. It is the JCF, in such a circumstance that has refused to enter into a new contractual arrangement with a former member. As such, the contractual terms of service of that former member, have come to an end by means of the effluxion of time. This is precisely why, a refusal to re-enlist is not to be viewed in law as being tantamount to a dismissal. A 'dismissal' would arise either in circumstances wherein a person as a JCF member, has no specific contractual period of service stipulated and that person is forcibly prevented from carrying out his functions as a member of the JCF, or alternatively, wherein, a person who has a specified contractual period of service, is forcibly prevented from carrying out his service functions, prior to that specified contractual period having expired. Neither of those two scenarios is applicable in the case at hand. Additionally, in the case at hand, the claimant cannot properly be considered in law as having 'withdrawn' from the JCF in a manner which is inconsistent with either the Constabulary Force Act or the Police Service regulations – which are the 'applicable regulations'. If it were otherwise, this would then mean that everyone in the JCF who applies for re-enlistment would necessarily have to be re-enlisted, since otherwise, they would have 'withdrawn' from the JCF in a manner which would be inconsistent with the Constabulary Force Act and the applicable regulations. Clearly, this cannot be and is not, either in fact or law, so.

[26] The next matter to be addressed as regards the claimant's contention that he had a legitimate expectation that he would not be refused re-enlistment except there was good and sufficient reason for the Compol to do so, is firstly, whether, as a matter of law, the claimant was entitled to have such 'legitimate expectation' and secondly,

whether the claimant did in fact have said legitimate expectation and thirdly, whether said legitimate expectation was denied.

[27] 'Legitimate expectation' is now a well-established ground for judicial review. A distinction is to be drawn though, between substantive legitimate expectation cases and procedural legitimate expectation cases. This court is of the understanding that what the claimant has averred as one of his grounds for judicial review, in ground, 'ii' is that which is termed as 'procedural legitimate expectation'.

[28] In essence, by that ground, the claimant has contended that he was legitimately expecting that the Compol would have acted fairly towards him in deciding upon his application to re-enlist, this insofar as the Compol would and should only have acted, 'on good and sufficient reason' in refusing to re-enlist him.

[29] There can be no doubt that the Compol, as a public functionary, entrusted with certain specific powers and responsibilities by statute, is governed by public law principles in the exercise of those powers and responsibilities. Equally, it cannot be doubted that as a matter of public law, every 'public functionary' must, when making decisions, do so in good faith and acting on reasonable bases/grounds. The failure to do so, may lead to this court setting aside any such decision.

[30] The law thus commits the Compol to act on reasonable grounds in refusing to re-enlist a person in the JCF to do otherwise, would be to act contrary to law. This court thus has no doubt, that the claimant would have had a legitimate expectation and could properly have so had, that his application for re-enlistment would not have been refused other than for good and sufficient reasons.

[31] What this court has been unable to conclude though, on the basis of the evidence presented before it, wholly on affidavit, herein, is that the Compol acted on other than good and/or sufficient grounds, in having decided to refuse to re-enlist the claimant. This court has been unable to so conclude, for the reasons provided above,

in paragraphs of these reasons for judgment. The onus was on the claimant to satisfy this court, if he could have, of the unreasonableness of the Compol's decision to refuse to re-enlist him. The claimant herein, has wholly failed to do so. As was stated by Ld. Diplock, in the case – **R v Inland Revenue Commissioners**, **ex p Rossminster** – [1980] AC 952, esp. at pp. 1013 F – H, 'Where parliament has designated a public officer as decision maker for a particular class of decisions the High Court … must proceed on the presumption omnia praesumuntur rite esse acta until that presumption can be displaced by the (claimant) for review – 'upon whom the onus lies of doing so.'

[32] In the case at hand, the claimant has wholly failed to discharge that burden, as regards his grounds for judicial review which contend, in essence, that the decision of the Compol to refuse to re-enlist him, was either not properly grounded in law, or unreasonable. As was stated by Lord Browne –Wilkinson, in the case – **Governors of the Bishop Challoner Roman Catholic Comprehensive Girls' School**, **ex p. Choudhury** - [1992] 2 AC 182, at p 197 E- 'It is essential that in exercising the very important jurisdiction to grant judicial review, the court should not intervene just because the reasons given, if strictly construed, may disclose an error of law. The jurisdiction to quash a decision only exists where there has in fact been an error of law.' No such error of law has been proven to have existed, as regards the reasons for the Compol's decision to refuse to re-enlist the claimant into the JCF.

The issue of fairness

[33] As this court understands it, based on inferences which this court has drawn from documentary evidence which was presented to it and adduced as exhibits at trial, when a member of the JCF seeks to re-enlist as a member thereof, prior to the Compol making the final decision on behalf of the JCF, as to whether or not such proposed re-enlistment will be approved, there is preliminary consideration given to that re-enlistment application by a Deputy Compol responsible for matters of administration. With respect to the claimant and his last application for re-enlistment, said preliminary consideration was given by Deputy Commissioner of Police Bent and she recommended to the Compol, that the claimant's then application for re-enlistment, not

be approved. Deputy Commission Bent, in her memorandum to the Compol, set out not only her decision not recommend the claimant for re-enlistment, but also, her reasons for having decided not to so recommend. That memorandum is dated November 24, 2010.

[34] In that memorandum, Deputy Commissioner Bent made mention of the claimant having been interdicted in 2007 and having been suspended for breach of the Corruption Prevention Act on June 8, 2010. The alleged circumstances which led to the claimant's suspension for breach of the Corruption Prevention Act and which, later, also led to the claimant having been criminally charged under that Act - this having been done pursuant to the ruling of the DPP that such charges be laid against him, were also detailed in that memorandum. In addition, that memorandum detailed allegations that the claimant's, 'work, worth, conduct and health prior to his suspension were below standards.'

[35] It is important to note that the claimant was never afforded any opportunity to respond to any of the allegations as were set out in that memorandum of the Deputy Compol, prior to the said memorandum having been transmitted to the Compol for his attention. In fact, the evidence adduced in this case, by the respective parties, clearly shows that the Compol refused the claimant's application for re-enlistment on November 24, 2010, whereas, the claimant first got notice that his application for re-enlistment would not be recommended, on November 26, 2010. That this is so, is apparent from the wording of the first paragraph of a letter which the claimant had written to the sub-officer in charge of the Alligator Pond police station in the parish of Manchester, in which letter, he detailed his responses to the grounds upon which Deputy Commissioner Bent had relied, in refusing to recommend his re-enlistment. That letter from the claimant was, it seems, written by the claimant on December 3, 2010 – as that is the date recorded beside the claimant's signature at the end of that letter. Notably, the Compol has, in his affidavit evidence as was sworn to, on July 20, 2012, in paragraph 3 thereof, referred to that letter as having been dated December 3, 2010 and as having been received by the JCF headquarters on December 7, 2010 and

the Compol has given no evidence whatsoever, disputing the claimant's contention in that letter, that did not receive notification from the JCF that his re-enlistment would not be recommended, until November 26, 2010 – this therefore having been two days after the Compol had already acted on the recommendation of Deputy Commissioner Bent and refused the claimant's application to re-enlist.

[36] As such, the claimant now contends that the whole process surrounding the Compol's refusal to re-enlist him, was unfair. Furthermore, he contends that when the Compol met with him, after having already decided to refuse to re-enlist him, the Compol then dealt with the matter in a very cursory way and that he (the claimant), never got an opportunity to say much to the Compol at that time, following on which, the Compol then told him, 'that his decision stands because I was caught on tape receiving money from the men'. (Paragraph 31 of affidavit of Kadia Ricardo Warren, which was filed on August 27, 2012.

[37] In specific response to the claimant's contentions as regards what had allegedly transpired during the Compol's meeting with him after the decision had already been made by the Compol not to re-enlist him, the Compol has averred in paragraph 4 of his first affidavit, which was filed on July 20, 2012, that – 'I met with Constable Warren in the presence of Deputy Superintendant O. Ramsay on January 6, 2011. At the end of this hearing, I did not change my decision because Constable Warren did not present any new or other material that would cause me to change my mind.'

[38] That last – quoted assertion of the Compol, makes it abundantly clear to this court, that the Compol did not, for the purposes of that oral 'hearing' of the claimant, following upon the Compol's earlier decision to refuse to re-enlist the claimant in the JCF, either at all advert, or at least, in any meaningful way, advert his mind to the new information which was provided to him by the claimant, once the claimant had become aware that a recommendation had been made to the Compol, that the claimant's application for re-enlistment in the JCF should be refused/denied. That 'new information' would have been that which was provided to him in writing by the claimant,

in correspondence which had the date of December 3, 2010, on it, beside the claimant's signature, at the end thereof.

[39] This was a situation in which the Compol would not have had the benefit of having seen or heard any response at all from the claimant, in respect of any of the allegations being made against him, prior to his having received that correspondence on December 7, 2010, which was a correspondence written by the claimant, in response to the notification given to the claimant on November 26, 2010, that a decision had been made to refuse to recommend him for re-enlistment. On that date of November 26, 2010 though and certainly, even as of December 3, 2010, which is the date of that correspondence, the applicant was not even aware that the matter concerning his application for re-enlistment, had already, by then, been determined by the Compol, from as of November 24, 2010, based on a recommendations which the claimant did not have the opportunity to address in terms of the grounds for that recommendation, prior to said recommendation having been made.

[40] Overall, this court has no doubt in its mind whatsoever, that the claimant could readily perceive that in the particular circumstances of this particular case, he was not afforded a fair hearing at any relevant stage either prior to, or subsequent to the Compol's denial/refusal of his application for re-enlistment. That perception is to this court's mind, in large measure, the rationale underpinning the pursuit of this claim before this court.

[41] This is not even a case in which the Compol has averred in any of his sworn evidence, placed before this court on affidavit, for the purposes of this claim, that he gave serious consideration to the responses put forward by the claimant in his letter of December 3, 2010, but nonetheless rejected same and gave sound reasons why same were rejected. Instead, the Compol has suggested that having met with the claimant on January 6, 2011, he did not change his decision, because he was not then presented with any new or other material that would cause him to change his mind. What then, of the material which the Compol was presented by the claimant in writing, on or about

December 7, 2010 – this being the date when the JCF headquarters received same? Wasn't that new material? It certainly was not anything, in terms of responses to the allegations, which the Compol was presented when he obtained from Deputy Commissioner Bent, the recommendation that the claimant's re-enlistment be refused. That memorandum of recommendation by Deputy Commissioner Bent was singular in its approach of overall condemnation of the conduct, as alleged, of the claimant, as a member of the JCF. Indeed, it was virtually inevitable that it would be so singular in approach, since the claimant was never afforded the opportunity to address any of the 'concerns' about his conduct, as were recorded by Deputy Commissioner Bent in that memorandum, at any time prior to that memorandum having been brought to the attention of the Compol. To this court's mind, this was overall, manifestly unfair to the claimant.

[42] What must also be considered carefully by this court though, is whether the claimant had any right to a hearing at all from the Compol as regards his application for re-enlistment into the JCF and further, whether, if he indeed had such a right, he was afforded a fair hearing, since, if he did have a right to a hearing at all, then there can be no doubt, that for such a hearing to have been of any legal validity whatsoever, the same would have had to have been fairly conducted. This court also must consider whether such a right to a fair hearing, if it existed at all, existed prior to the Compol's initial decision to refuse to re-enlist the claimant, or alternatively, only existed after the Compol had made that decision and was, upon the request of the claimant, reconsidering same. This court will carefully address all of these issues in these reasons for judgment, but will do so, only after it has considered the only other legal issue in this case, which now also awaits resolution by this court. That other legal issue is as to whether the Compol could lawfully have refused to re-enlist the claimant, on the basis of criminal allegations which had not, by then, been proven in a court of law and which perhaps, have never been proven even since then and may in fact, never be proven at all. Furthermore, even if the Compol had been minded to refuse to re-enlist the claimant on the basis, primarily, of criminal allegations which were then pending against the claimant, he (the Compol) would have had to have commissioned an

enquiry by tribunal to enquire into that matter and make certain recommendations to him. It is not disputed that no such enquiry tribunal was ever commissioned as far as the claimant is concerned. What is in clear dispute however, is whether such a tribunal enquiry was required by law to have been held, prior to the Compol having decided to the refuse to re-enlist the claimant, or after the Compol had so decided.

Was a Tribunal Enquiry Necessary

[43] A significant portion of Deputy Commissioner Bent's memorandum of recommendation (minutes) to the Compol related to criminal allegations made against the claimant, arising from which, the claimant was, at the time of the writing of that memorandum, under suspension from duties as a JCF member and later on June 16, 2010, arrested and charged with two offences, under the Corruption Prevention Act.

[44] Arising from this, it is the claimant's contention that since the Compol acted on the said memorandum of recommendation in other to justify his decision to refuse to re-enlist the claimant and in large measure, that memorandum pertained to criminal charges which were then pending against the claimant, it was not lawfully within the legal authority or jurisdiction of the Compol, to have acted on the basis of unproven allegations of criminal wrongdoing which were, as of the date when the claimant's application for re-enlistment was refused by the Compol, that being: November 24, 2010, then pending before a Magistrate's Court, in refusing to re-enlist the claimant. Accordingly, the claimant further contends that he was entitled to a full hearing at a court of enquiry, pursuant to the provisions of the police services regulations, 'since it is clear that action was being taken against him for disciplinary reasons and on the assumption that the allegations made against him were in fact true. He never got such a hearing. Such a hearing could not in any event legally take place before the conclusion of the criminal case'. (Ground (iv) of the claimant's grounds for judicial review).

[45] This court entirely rejects this ground for judicial review, based on the particular facts of this particular case. This court has rejected same because, as aforementioned, in the case at hand, no disciplinary action was ever instituted by anyone within the JCF, as against the claimant, in circumstances wherein the claimant has by means of this claim, challenged such disciplinary action. The basis for this claim is that the claim was refused re-enlistment within the JCF. As the case – **Clarke v Commissioner of Police and anor** (*op.cit*), has made clear, a refusal of re-enlistment is not tantamount to, nor is it in fact, a dismissal. Furthermore, it is this court's view that a refusal of re-enlistment is not a disciplinary measure. It is nothing more nor less than a termination of the contractual period of employment service, of a member of the JCF, as a consequence of the effluxion of time, such that the said employment contract terminated as per the terms of that same contract, which would have been willingly agreed to by the contracting parties.

[46] It would only have been if there was either a process which could potentially have led to his dismissed from the JCF, or a process of discipline, either of which was to have been undergone pursuant to regulations 30-59 of the Police Service Regulations, that the claimant could have been entitled to have had an enquiry held by a tribunal, in accordance with the said Regulations, as regards same. That is not though, the case here. All that transpired in this case, was that the Compol was deciding as to whether or not to accede to, or refuse, the claimant's application for re-enlistment into the JCF. No enquiry tribunal was required to be held by the Compol, either before he made the decision to refuse to re-enlist the claimant into the JCF, or at any time after he had made that decision. The claimant was never dismissed from the JCF, nor has he, in this claim, made complaint as regards any disciplinary proceedings that were instituted against him. Furthermore, I reiterate, only for the sake of emphasis, that a decision on re-enlistment, is not, even where that decision is to be made such that it will be adverse to the applicant seeking re-enlistment, by any means, equivalent to either the institution of, or the culmination of, any disciplinary process against that applicant. That is simply not a disciplinary process, in any way, shape or form.

Fairness

[47] This court thus, now returns to the issues which it had raised earlier, as regards the matter of fairness, in the particular circumstances of this particular case.

[48] Was the claimant entitled to a hearing prior to the Compol's decision to refuse to re-enlist him? On the authority of **Clarke v Commissioner of Police and anor**. (*op.cit*), this court is obliged to state and for my part, I must say that I think that this court is correctly obliged to state, that the claimant was not entitled to any hearing at the preliminary stage which was prior to the Compol's determination that he (the claimant) would be refused re-enlistment in the JCF.

[49] This must be so, since the claimant, in reality, lost nothing which he had any right to, or any right to expect to derive benefit from, insofar as his hoped for re-enlistment, was concerned. The claimant had no right whatsoever, to be re-enlisted. Re-enlistment in the JCF ought never to be perceived by anyone as being a matter of right. That is no more a matter of right in law, than it is a right to have freedom of contract. Pursuant to that right of freedom of contract, the Compol, as the head functionary within the JCF, decided to refuse to re-enlist that claimant. The Compol was perfectly entitled to have so done without having held any form of hearing whatsoever, with the claimant, prior to his having done so.

[50] It has never been the law, that where a decision is to be made which may be adverse to someone's interests, or best interests, that that person who may be adversely affected by that decision, must be heard at all stages of the decision making process, particularly, in circumstances wherein, that decision making process is, of necessity, one that must be made after various stages in that process, have been undergone. On this point, see: **Rees v Crane (P.C.)** [994] 43 W.I.R. 444, at p. 457 b-d, per Ld. Slynn of Hadley; and **R v Panel on Take-Overs and Mergers, ex parte Fayed** – [1992] 5 Admin. L.R. 337; and **Lewis v Heffer** – [1978] 1 W.I.R. 1061; esp. per Ld. Denning, M.R. at p. 1073 and Geoffrey Lane, L.J., at p. 078; and **Furnell v Whangarei High Schools' Board** – [1973] A.C. 660.

[51] The claimant's non – re-enlistment into the JCF, although having been decided upon by the Compol, on November 24, 2010, did not become effective in law, until it was published in the Force Orders for the JCF on January 13, 2011. The claimant has given evidence of this, in page 28 of his affidavit, which was filed on November 29, 2011 and has appended that Force Orders publication to said affidavit, as exhibit 7.

[52] It is noteworthy that, just as has been deposed to by the claimant in that affidavit evidence of his, said Force Orders explicitly states that the claimant – 'Kadia Ricardo Warren' had, 'been dismissed from the force' '... as not been permitted to re-enlist'. Constable Warren (the claimant) was one of a total of eight officers who were named in the said Force Orders as having been 'dismissed', each from as of varying dates, as a result of each of them not having been permitted to re-enlist.

[53] This is a most regrettable and inappropriate use of terminology in the Force Orders and such inappropriate use of same, amongst other things, has no doubt contributed to the claimant being of the view that he was unfair dismissed from his employment with the JCF. For reasons already made clear by this court though, that is simply not so. For the avoidance of doubt and for the overall purpose of legal clarity in future however, it may be of value, for the Compol to ensure that no reference is made to a JCF member having been dismissed, arising from refusal of re-enlistment, in the future. All that needs to be done is for the names, ranks and police registration numbers of the persons who have been refused re-enlistment in the JCF, to be published in the Force Orders, along with the respective dates when such refused of re-enlistment took effect. Dismissal from employment with the JCF as a JCF member, on the one hand and the refusal to re-enlist a JCF member, on the other hand, are not only two completely different legal concepts, but also, a different procedure is applicable to either of same, if same is to be lawfully carried out by the Compol.

[54] The claimant has provided unchallenged evidence to this court, that the said edition of the Force Orders, as referred to above, came to his attention as of, on or about August 15, 2011. The date when the same came to his specific attention though,

is irrelevant for the purposes of this claim. It is the date when said refusal of re-enlistment became effective in law, that is of relevance. The date when same becomes effective is, according to that which was decided by Jamaican's Court of Appeal in the **Clarke** case (*op.cit*.), the date when the formal order as to the outcome of the application for re-enlistment is promulgated via the Force Orders. In the **Clarke** case (*op.cit.),* the Court of Appeal specifically concluded that the appellants life in the JCF came to an end in 1993, after 15 years of service. As opined by Carey, J.A and recorded at p. 307 of the cited law report of that case – 'A Force Order dated November 18, 1993 proclaimed his exit as at that date.'

[55] Insofar as the claimant is concerned though, the Force Orders pertaining to the refusal of his re-enlistment, were, as per the claimant's unchallenged evidence on this point, published on January 13, 2011. Despite this though, unlike as was done by a former Compol with respect to the appellant – Glenroy Clarke, who had also challenged the refusal of the then Compol to re-enlist him, after said refusal had been published in the Force Orders, in the present case, unlike as transpired with respect to Clarke, the effective date of refusal of re-enlistment of the claimant, was, in the relevant Force Orders, back – dated to the actual date when the Compol made his decision to refuse to re-enlist the claimant,, that being: November 22, 2010. This, it should be noted, is a date which is even prior to the actual date when the Compol noted on the memorandum of recommendation/minute, that the claimant's re-enlistment was refused. Clearly therefore, the earliest date, as a matter of law, when such re-enlistment refusal, in relation to the claimant, could have taken place, would have been November 24, 2010 and November 22, 2010 – that latter being the claimant's effective date of 'dismissal' arising from his not having 'been permitted to re-enlist'.

[56] As far as this Court is concerned though, for the purposes of the applicable law in relation to this matter, it is this court's considered opinion that although the Compol did in fact make his decision to refuse to re-enlist the claimant on November 24, 2010, fairness required that, prior to that decision having been made final and thus, prior to that decision having been published in the Force Orders, the Compol should have

ensured that a fair hearing was conducted in relation to all of the allegations made against the claimant. These were the very same allegations which the Compol had considered and had accepted as valid and no doubt, substantial in nature and which thus, led to the Compol having acted on Deputy Commissioner Bent's recommendation – which itself, was also based on those same allegations and refused the claimant's re-enlistment as a member of the JCF.

[57] The Court of Appeal's reasons for its judgment in the **Clarke** case (*op.cit.)* has compelled this court to draw that conclusion. Clearly too, the Compol seemed to believe that, at the very least, a hearing was necessary subsequent to his earlier decision to refuse the claimant's re-enlistment into the JCF. Indeed, he held a hearing in that regard, this insofar, as he undoubtedly met and held some amount of discussion with the claimant, in the presence of another senior police officer, from whom no evidence has been given as to anything that transpired at that meeting, in relation to matters concerning the refusal of re-enlistment of the claimant.

[58] In the mind of the Compol, who, by the time when that meeting was held, had already decided to refuse to re-enlist the claimant, no doubt, that meeting was to be held so that the claimant could then be afforded the opportunity, to place before him, grounds upon which he (the Compol) could properly change his mind and alter his earlier decision to refuse to re-enlist the claimant. As quite properly opined by Carey, J.A in the **Clarke** case (*op. cit.),* at p. 309, b – f – '*Where the Commissioner has taken a decision not to approve re-enlistment, then, upon, any application by the member for re-enlistment the commission (sic.) is obliged to supply the reasons for his decision and allow the officer affected an opportunity to be heard in relation to that material if the officer requests it. In the instant case, the gravamen of the attack on the decision is that the Commissioner intimated to the chairman of the Police Federation his intention not to change his decision to refuse approval upon receipt of the appellant's application. Presumably, it is being said that the Commissioner should await the application before giving a ruling. I have already endeavoured to show that the Commissioner was not acting unfairly if he acted in the way that it is said that he did. Any right which the*

appellant had to be heard could only arise after the appellant had been advised of the decision not to approve and the reasons therefor. The opportunity afforded to the appellant to be heard allowed the Commissioner to review his decision in the light of any submissions made to him by the officer or his attorney. The reasons having been supplied, must then be answered by the attorney. Consequently, the exercise is more akin to an appeal process than to a trial process. The onus is thus on the officer to show cause why he should be allowed to re-enlist.'

[59] This court has no doubt, that such was what was in the Compol's mind, in the present case, at the stage when that meeting between himself and the claimant was held. Thus, the Compol, at paragraph 4 of his first affidavit which was filed on July 20, 2012, deponed as follows –

> *'I met with Constable Warren in the presence of Deputy Superintendant O. Ramsay on January 6, 2011. At the end of this hearing I did not change my decision because Constable Warren did not present any new or other material that would, cause me to change my mind.'*

[60] In order for that hearing with the Compol on January 6, 2011, to have been fair, there were a number of things which ought to have happened prior thereto, which clearly did not in fact happen. Firstly, the claimant should have been made aware, preferably in writing, as the **Clarke** case (*op.cit*.) dicta from Carey, J.A. cited above, clearly states, the grounds upon which the Compol acted, in having refused the claimant's re-enlistment. As at the date of that meeting, the evidence clearly shows that the claimant knew that his re-enlistment had been refused by the Compol and he also, by then, knew of the reasons why Deputy Commissioner Bent had not recommended his re-enlistment, or in other words, had recommended that he not be re-enlisted. The claimant did not however, as at the date of that meeting, know what were the precise grounds upon which the Compol acted in having refused to re-enlist him. It is not that this court is suggesting that the claimant has to be provided with full details surrounding all of those grounds, but at the very least, he needed to know what those grounds were, since otherwise, how could the claimant reasonably have been expected to have been able to convince the Compol to change his mind? The Compol may very well, not have

been, when he made the decision to refuse to re-enlist the claimant, acting on the grounds of the recommendation which had, by then, been made to him by Deputy Commissioner Bent. The Compol could very well, at that stage, have been acting on confidential material, which even the Deputy Commissioner herself may not have been aware of. Further, the Compol may have been acting on one or the other of the grounds as set out in the Deputy Commissioner's memorandum of recommendation/minute, but not on others. All of this was entirely unknown to the claimant as at the commencement of the relevant meeting between himself and the Compol.

[61] This court does now know, from the evidence which has been deponed to by the Compol, on affidavit, that the Compol, in having decided to refuse to re-enlist the claimant, acted wholly and solely on the recommendation and grounds for the recommendation that the claimant not be re-enlisted, which was provided to him, prior to the making of his decision, by Deputy Commissioner Bent. Far more importantly though, it was for the defendant in the trial of this claim before me, to have led evidence of matters within his knowledge, which would have, or could have properly assisted this court in concluding that the relevant 'hearing' held on January 6, 2011 with the claimant, was fair. Not only has the defendant's evidence failed to do this, the claimant's evidence has manifestly shown such hearing to have been unfair and his evidence in that regard, has actually been buttressed by the defendant's evidence, albeit no doubt, unwittingly so. The claimant was the one who should have been made aware, sufficiently in time, in advance of that meeting, what were the grounds upon which the Compol acted in refusing to re-enlist him. Not only was this not done, but furthermore, it is the evidence of the defence, which this court accepts in that respect, that the claimant only knew of the reasons for Deputy Commissioner Bent's recommendation that he not be re-enlisted, when he received a notice informing him of same, on November 26, 2010. That is the defence's evidence, because it is gleaned from a letter – earlier referred to in these reasons for judgment, which was attached as an exhibit to the Compol's first affidavit and which appears to have been written by the claimant and dated – '2010 –12 – 03', which this court, takes as being December 3, 2010 and which

was the date that the Compol himself understood as being the date of same. In paragraph 3 of the said affidavit of his, the Compol has so referred.

[62] Secondly, as briefly referred to above, the claimant should have been afforded sufficient time to have carefully considered any reasons that ought to have been given to him, for the Compol's decision to refuse to re-enlist him. In the case at hand, not only was the claimant not provided with any reasons for the Compol's refusal, prior to that meeting, he was only notified of that refusal, by letter which was handed to him on January 3, 2011. That letter informed him of the meeting which he was to have with the Compol on January 6, 2011, at 8 a.m. As such, the claimant was, at most, afforded two clear days for that important meeting. Clearly, such would have been insufficient time. A minimum of seven clear days, exclusive of weekends and public holidays and thus, not taking into account a mere part of any day, should always, in the future, be afforded to someone such as the claimant in a circumstance such as this. This is though, specified as a minimum time only and should not be taken as this court setting down a settled legal rule as to how much time should be afforded in advance of any particular hearing, in order to properly enable the party that may to be detrimentally affected by the outcome of that hearing, sufficient advance time to prepare for same. The length of advance time notice, must, of necessity, vary from case to case. Undoubtedly, the more serious and extensive that the allegations are, is the more time that should be afforded in terms of advance notice. In this case, failure to have afforded sufficient advance notice time to the claimant, also leads this court to conclude that the said 'hearing' was unfair.

[63] The claimant should have been informed by the Compol, once again, preferably in writing, that he was entitled to have an attorney present to represent his interests and to make representations on his behalf at that meeting. Certainly that was what was accepted by the Court of Appeal in the **Clarke** case (*op.cit.),* as being part and parcel of a required fair hearing. In the present case though, the claimant was never so informed. Instead, he was informed by some means which is presently unknown to this court, that he was to attend upon the office of the Compol on January 6, 2011, at 8 a.m.

with respect to the refusal of his re-enlistment. This court knows of this because, there has been attached as exhibit 'O.E.S' to the second affidavit of the Compol and referred to in paragraph 24 of that affidavit, a letter under the hand of 'Superintendant of Police'. Below which is written the word. 'Personnel', which is addressed to the Superintendent of Police, Manchester Division. That letter informs its addressee that Constable 10661 Kadia Warren (this being the claimant) 'is to attend an interview with the Compol at 103 Old Hope Road, Kingston 6, on Thursday, January 6, 2011 at 8.00 am, in respect, to the refusal of his re-enlistment.' That letter did not even so much as inferentially suggest that the claimant could have had an attorney represent his interests at that 'interview' (a most unfortunate choice of word in the circumstances).

[64] Whilst attorneys are not always required to be present in order for a hearing to be fair, it is clear that in cases involving a hearing with the Compol following on a refusal to re-enlist a member of the JCF, past practice would require that the attorney's presence at that hearing specifically be permitted. In the **Clarke** case (*op. cit.),* that was specifically permitted by the then Compol, at that hearing. Also, in order for such permission, if it is indeed being granted, to be of any usefulness, clearly the party whose enlistment has been refused, needs to know of the grant of such permission, sufficiently in advance of such hearing, in order that he can make appropriate arrangements to have an attorney of his choice, represent him at that hearing.

[65] In the present case as regards the claimant, the Compol clearly was of the view and understanding that the only 'hearing' which he had with the claimant was the one which he had on January 6, 2011 – during which, he met with the claimant. There exists evidence from the claimant as to the manner in which that meeting 'progressed'. That evidence is set out in paragraph 27 of the claimant's affidavit which was sworn to, on November 29, 2011 and reads as follows –

> *'I sought and obtained an appointment to see the Compol. On the day of my appointment I was given audience but the Commissioner was very busy. He simply told me that his decision stands because I was caught on tape receiving money from the man. The allegations made by my*

supervisor were not addressed at all and was not given an opportunity to address them.'

[66] The Compol did not, in either of his affidavits which were deponed to and are being relied on by him in response to this claim, specifically refute either of those specific assertions as made by the claimant, as immediately above – quoted. His failure to have specifically refuted same, has led this court to conclude that the said assertions of the claimant, as set out in paragraph 27 of that said affidavit, are true, since if not, why would not the Compol have specifically addressed same in any of his affidavit evidence and therein, specifically refuted same? The answer to that question is, I think, obvious.

[67] The Compol, rather than having specifically refuted same in either of the true affidavits which he deponed to, in response to this claim close to simply state in respect of that meeting with the claimant, that – 'I met with Constable Warren in the presence of Deputy Superintendent O. Ramsay on January 6, 2011. At the end of this hearing I did not change by decision because Constable Warren did not present any new or other material that would cause me to change my mind. See: paragraph 4 of first affidavit of the Compol.

[68] With all due respect to the Compol, this court must state that such an account of the meeting as immediately above – quoted, appears very legalistic in nature and in any event, constitutes a mis-statement of the undisputed fact, that, at least as of the date of that meeting, the Compol would and should have been aware of the claimant's response to the non-recommendation of his re-enlistment by Deputy Commissioner Bent. Additionally, as of the date of that meeting, the Compol would have been aware that the grounds upon which he had acted in refusing the claimant's re-enlistment, had not been specifically made known to the claimant. Also, the Compol would have been aware that the grounds upon which he acted in refusing the claimant's re-enlistment were the very same grounds upon which Deputy Commissioner Bent had recommended that the claimant's re-enlistment be refused. As such, the readily recognized that he had to give serious consideration to the new material which was

presented to his office, in writing, by the claimant, as to why Deputy Commissioner Bent's recommendation that the claimant's re-enlistment should be refused, was flawed and should not have been accepted by the Compol as valid and/or compelling.

[69] The Compol though, to this court's mind, rather than, at that meeting, having specifically addressed those new matters raised in the claimant's correspondence with the date December 3, 2010 written alongside the claimant's signature, seemingly decided, as at the date when his office received same – that being December 7, 2010, that since, as at that date, the claimant's re-enlistment had, by then, already been refused, since as of November 24, 2011, those responses from the claimant to Deputy Commissioner Bent's recommendation, could be and should be disregarded for the purposes of the meeting which he held with the claimant on January 6, 2011. Nothing could have been further from that which the Compol was then legally required to do.

[70] That correspondence dated December 3, 2010, constituted the new material which could have led the Compol to have changed his decision which had, as of January 6, 2011, already by then been made, to act on Deputy Commissioner Bent's recommendation, based on the Compol's then perceived soundness of the grounds for said recommendation.

[71] As such, there were, in essence, two facets to the 'hearing' before the Compol. One of these was the correspondence of the claimant to the Compol, specifying in detail, why the memorandum of recommendation sent to the Commissioner by Deputy Commissioner Bent, should not be acted on. The other was the actual 'face-to-face' hearing which was held on January 6, 2011. Both facets had to be addressed either individually or simultaneously by the Compol, in conjunction with the claimant. Regrettably for the Compol, it is patent to this court, that he only addressed the latter – mentioned facet, since he had, by then apparently chosen to disregard the former. If he had not chosen to disregard the former, but had instead, rejected the claimant's assertions in that letter, he (the Compol), ought to have provided to this court, reasons as to why he rejected same. The failure to provide such reasons, can, in appropriate

cases, such as this court believes this case to be, lead a reviewing court to the conclusion, that either the Compol did not give serious consideration to that facet, or alternatively, rejected the assertions as contained in that correspondence, for no valid reason whatsoever. All of this, in sum overwhelmingly leads this court to conclude overall, that the Compol did not treat the claimant fairly in terms of that 'hearing' which he held with him on January 6, 2011.

[72] As regards the absence of reasons for the Compol's decision that nothing new was presented to him by the claimant, which caused him to change his mind, all that this court will do in that regard, is refer to that which was stated by Ld. Keith of Kinkel in the House of Lords case – **R v Trade and Industry Secretary**, **ex p Lonrho plc**. – [1989] 1 WLR 525, at pp. 539 H – 540 A – 'The absence of reasons for decision where there is no duty to give them cannot of itself provide any support for the suggested irrationality of the decision. The only significance of the absence of reasons is that if all other known facts and circumstances point overwhelmingly in favour of a different decision, the decision – maker, who has given no reasons, cannot complain if the court draws the inference that he had no rational reason for his decision'. That quotation is entirely apposite to the particular circumstances of this particular case. See also **Flannery v Halifax Estate Agencies Ltd**. – [2002] 1 ALL E.R 373, ex p. at p. 377.

[73] In the circumstances, this court will, in exercise of its discretion, bring the decision of the Compol to refuse to re-enlist the claimant, into this Honourable Court and quashes that decision. This is not the end of that matter though, as it is not for this court to make the Compol's decision, as to whether the claimant's re-enlistment as earlier refused by the Compol, should stand as extant, or is to be revoked. The matter as to whether or not the claimant should be re-enlisted is therefore remitted by this court to the Compol, for re-consideration, solely in terms of re-consideration of his decision to refuse the re-enlistment of the claimant, into the JCF. That reconsideration by the Compol, should take into account and apply, all of the elements required for a fair hearing of same, as having been specified in these reasons for judgments. In addition, it should be noted, for future reference, that it would likely save time and costs at future

judicial review 'trial' if in circumstances such as existed in this case, where the Compol is to hold a hearing following on refusal of re-enlistment, there is an accurate record taken by a third party, of all that transpired at that hearing, in terms of what was stated by either party during same. Of course though, in circumstances wherein the 'hearing' is to be held entirely by means of written communications, then this will not be necessary. In oral hearings though, the failure to take such a accurate record, of what transpired at that hearing, could inevitably lead to cross-examination of respective deponents, including of course, the Compol, if he has deponed to affidavit evidence as to what transpired at that hearing and as to why nothing put forward at that hearing, caused him to change his mind to refuse to re-enlist someone, in the JCF. The only reason why such a course was not required to be undergone in the present case, is because, as aforementioned, the Compol did not, in his affidavit evidence, specifically refute the claimant's assertions as regards what transpired at that hearing. If there had been apparent conflict of evidence existing in that respect, only evidence under cross-examination could properly have served the purpose of enabling this court to have properly resolved that conflict. It is sincerely hoped by this court therefore, that in particular, the DSP will take special notice of this and advise the Compol accordingly.

[74] The costs of this claim are awarded to the claimant and the claimant shall file and serve the required order.

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Hon. K. Anderson, J.