



15 NOVEMBER 2012

## PRESS SUMMARY

In the matter of a request for advice on the interpretation of section 96(1) and section 106(1) of Schedule 2 to the Cayman Islands Constitution Order 2009

Chief Justice of the Cayman Islands v (1) The Governor of the Cayman Islands (2) The Judicial and Legal Services Commission of the Cayman Islands

**MEMBERS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL:** Lord Neuberger, Lord Hope, Lord Mance

### BACKGROUND TO THE PETITION

On 1 May 2012, the Chief Justice of the Cayman Islands ('the Chief Justice') presented a petition ('the Petition') to Her Majesty. The Petition asked Her Majesty to refer two issues to the Judicial Committee of the Privy Council ('the Judicial Committee') for advice pursuant to section 4 of the Judicial Committee Act 1833 ('the 1833 Act') [13]. These issues concerned: (i) the extension of the appointment of a Justice of the Grand Court for the Cayman Islands ('the Grand Court') [8]-[10], [14]; (ii) the publication of a Complaints Procedure in relation to the Cayman Islands Judiciary [11]-[12], [15]. Both issues involved the interpretation of the Cayman Islands Constitution Order 2009 (SI 2009 No 1379) ('the Constitution'). The Governor of the Cayman Islands ('the Governor') applied to the Judicial Committee to advise Her Majesty that it would not be appropriate to give substantive advice on the merits of the two issues, primarily on the basis that these issues should be resolved, at any rate initially, in the Grand Court [17].

The Petition raised a point of general importance as to whether the Judicial Committee may decline to rule on issues raised in a petition referred to it by Her Majesty under the 1833 Act and, if so, the circumstances in which it would be appropriate for it to do so [1].

### ADVICE

The Judicial Committee unanimously advises Her Majesty that the Chief Justice's Petition should be dismissed.

### REASONS FOR THE ADVICE

It is open in principle for the Judicial Committee to advise Her Majesty that it is inappropriate to provide substantive answers to the two issues referred by the Petition, if it considers that that is the right course to take [22]. Clear words in section 4 of the 1833 Act, or a clear previous decision of the Judicial Committee on the point, would be required before the Judicial Committee would be precluded from tendering to Her Majesty advice which it considered to be correct as a matter of law [23]. If the Judicial Committee simply cannot deal with an issue raised by a petition, then the Judicial Committee may refuse to do so. Similarly, in other circumstances, the Judicial Committee may refuse to deal with

issues raised by a petition, because the role of the Judicial Committee includes advising Her Majesty as to the appropriateness of the provision of substantive answers on the issues referred to it [29].

It would be inappropriate for the Judicial Committee to substantively consider the two issues raised in the Petition, because those issues could be raised by way of ordinary proceedings in the Grand Court. Where such proceedings are a possibility, it would be wrong as a matter of principle, and in the absence of special factors, for the Judicial Committee to act as a court of first and last resort [33]. The 1833 Act is intended to be limited to providing a mechanism to bring issues to the Judicial Committee which cannot be determined through the ordinary judicial process. This process may only be bypassed where special circumstances so justify [34].

There are no special factors in this case which, either alone or taken together, cross the relatively high hurdle to justify the provision of substantive answers on the two issues, because those issues can be considered by the Grand Court in the normal way [41]. If the Chief Justice brings an application in the Grand Court, there is no risk of the Governor selecting the judge in his own cause, because the Governor would ask the Lord Chief Justice of England and Wales to nominate a temporary judge to consider that application [36]. If the Chief Justice brought such an application, and appealed the decision of the temporary judge, there would be no difficulties in finding a suitable Court of Appeal panel [37]. That the two issues are of high constitutional importance reinforces why the Grand Court should initially deal with them [38]. The Judicial Committee will normally wish to have regard to the views of the local court when determining constitutional issues which are brought before it from that court's jurisdiction [41]. The views of the Chief Justice should be accorded considerable respect by the Judicial Committee, but in this case his views are counterbalanced by those of the Governor, and the decision whether to provide substantive advice remains a decision for the Judicial Committee alone [39]. The possible saving of time and costs through bypassing the ordinary judicial process might have force in an extreme case, but this is not such a case [40].

By way of future guidance, the Judicial Committee advises that if issues are specifically referred to it by Her Majesty, the role of the Judicial Committee is to tender advice which it considers to be correct as a matter of law or which, on the facts before it, is appropriate [25], [44].

#### **NOTE**

**This summary is provided to assist in understanding the Judicial Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Judicial Committee is the only authoritative document. Judgments are public documents and are available at: [www.jcpc.gov.uk/decided-cases/index.html](http://www.jcpc.gov.uk/decided-cases/index.html).**