



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2025 No 185

BETWEEN: **AMIR MIZRACHY** **APPLICANT**

AND

THE POLICE COMPLAINTS AUTHORITY **RESPONDENT**

Application for a Protective Costs Order in relation to Judicial Review proceedings

In Chambers

Martin J

Date of hearing: 23 March 2026

Date of Ruling: 27 March 2026

Mr Amir Mizrachy in person

Kyle Masters of Carey Olsen Bermuda Limited for the Police Complaints Authority

RULING

Introduction

1. This is the court's ruling in respect of an application for a protective costs order made by Mr Mizrachy in connection with his application for judicial review of the decision of the Police Complaints Authority ("the PCA") to dismiss his complaint summarily. For the reasons set out below, the court has decided to dismiss Mr Mizrachy's application because the claims raised in the judicial review proceedings do not involve matters of general public interest or importance.

Background facts

2. The issues arise in the following context. Mr Mizrachy was involved in an argument in the parking lot in March 2019. The argument arose because Mr Mizrachy had parked in someone else's reserved space when he was dropping his child at a nearby nursery school in Hamilton. The person whose parking space Mr Mizrachy had temporarily occupied arrived to find her space was taken and parked her car behind Mr Mizrachy's car which blocked Mr Mizrachy's car in. When Mr Mizrachy returned to his car, angry words were exchanged with the other car owner. The account of what was said between Mr Mizrachy and the other car owner was disputed. The police were called. An officer attended the scene who engaged with Mr Mizrachy.
3. Before Mr Mizrachy left, he deliberately scratched the paintwork on the car of the person whose parking space he had temporarily occupied, causing damage to the paintwork. The car owner made a formal complaint to the police which resulted in charges against Mr Mizrachy for using offensive language and causing criminal damage to the other car owner's vehicle. The incident was witnessed by two other people from across the street who saw what happened but did not hear the exchanges of words. These witnesses gave evidence at Mr Mizrachy's trial in the Magistrates' Court.
4. Mr Mizrachy was convicted of the offences. It should be noted that his conviction for the use of offensive language was quashed on appeal, but his conviction for criminal damage was upheld¹. It is right to record that Mr Mizrachy has appealed the decision upholding his conviction for criminal damage, which is presently pending a hearing before the Judicial Committee of the Privy Council. For present purposes the court adopts the summary of the facts recorded in the Court of Appeal's judgment in relation to this case.
5. Mr Mizrachy alleged that in the course of this incident the police officer concerned conducted himself inappropriately (to use a very neutral term) in four separate instances connected to Mr Mizrachy's case. These can be summarised as follows:
 - (i) Mr Mizrachy alleges that the police officer spoke to him in an arrogant and condescending manner in the parking lot when the police officer arrived at the scene on 19 March 2019.

¹ **Mizrachy v R** [2025] CA (Bda) 16 (Crim) affirming the decision of Diel AJ on appeal from the Magistrates' Court.

- (ii) In the investigation process that followed, on 20 April 2019 the police called Mr Mizrachy in to attend the police station for interview and questioning. Mr Mizrachy alleges that the police officer concerned used racially offensive antisemitic language on this occasion.
 - (iii) When Mr Mizrachy arrived at the police station later the same day, after initial questioning in the presence of another officer (about which no complaint is made), Mr Mizrachy alleges that the police officer concerned detained him in a cell for a period, while his wife and children waited outside in the waiting room.
 - (iv) Mr Mizrachy alleges that on a subsequent occasion on 20 February 2020, the police officer concerned attended at Mr Mizrachy's home to take a further statement and says that on this occasion the police officer again used racially offensive antisemitic language.
6. Mr Mizrachy made a complaint to the PCA in February 2020 identifying these matters as complaints against the police officer concerned. The complaint was acknowledged by the PCA in March 2020. On 28 May 2025, the PCA issued a letter to Mr Mizrachy which informed him that based on the investigation by the PCA (i) there was no independent corroboration of the allegations and (ii) there was no breach of the Standards of Behaviour in the Police (Conduct) Orders 2016 or the Police (Performance) Orders 2016. Accordingly, the PCA was satisfied with the findings of the Police Service and the manner in which the case was handled. The PCA decided to take no further action and the case was closed.
7. Mr Mizrachy objected to the summary rejection of his complaint and wrote several letters setting out his reasons. It is not necessary to recite those reasons for present purposes. The PCA responded to those objections by letter dated 28 July 2025 stating that the PCA had power to decide to take no further action in relation to a complaint if the PCA considers that there is an adequate alternative remedy which is available to the complainant citing its powers under section 12 (1) (b) (iv) of the Police Complaints Authority Act 1998 ("the Act"). The PCA referred to the fact that Mr Mizrachy had exercised his rights of appeal, and that in the decisions of the Supreme Court and Court of Appeal which cast no doubt on the actions of the police officer concerned. Further, the PCA referred to the PCA to take no further action in relation to a complaint if the PCA considers that in all the circumstances further action is unnecessary or inappropriate, citing the provisions of section 12 (2) of the Act to that effect.

The Judicial Review application

8. Mr Mizrachy issued an application for judicial review against the decision of the PCA and permission to issue judicial review proceedings was granted on the papers by Mrs Justice Subair Williams on 5 September 2025. The notice of motion was issued on 15 October 2025 and seeks relief in respect of (i) the initial decision of the PCA as reflected in the letter of 28 May 2025 and (ii) the reasoning set out in the PCA's second letter of 28 July 2025 (iii) all related refusals (which were unspecified) to investigate his complaint.
9. Mr Mizrachy seeks a number of declarations in relation to those matters. The relief he seeks includes declarations that the PCA's decisions are unlawful, that the PCA's reliance on the provisions of section 12 of the Act are an unlawful abdication of its statutory duties, and (reading the claim broadly) that the PCA's failure to conduct a proper investigation into his

complaint was unlawful or inadequate, that the PCA's delay of 5 years in dealing with his complaint was unreasonable and prejudicial and denied him of his remedy and that the dismissal of his complaint was in breach of his rights under the European Convention on Human Rights.

10. Mr Mizrachy seeks orders quashing the decisions and positive orders requiring the PCA to conduct a proper investigation into his complaint. As part of the relief in his application for judicial review, Mr Mizrachy also referred to a protective costs order.
11. As Mr Mizrachy correctly submitted, it is not the function of the court on this application to conduct a mini trial into the ultimate merits of his application for judicial review in assessing the merits of his application for a protective costs order. The court has set out the basic background facts to provide a context for the court's assessment of the merits of the application for the protective costs order only. The full merits of Mr Mizrachy's application for judicial review will be considered at the full hearing of the application and form no part of the court's present evaluation of Mr Mizrachy's application for a protective costs order.

The Protective Costs Order application

12. Mr Mizrachy issued a separate application by summons dated 17 November 2025 for a protective costs order to the effect that (i) he shall not be liable to the PCA for any costs in the event that his application is unsuccessful and (ii) that he shall be allowed to recover his own costs from the PCA in the event he succeeds.
13. Mr Mizrachy set out his grounds for a protective costs order in an affidavit dated 14 November 2025 in support of that application. He deposed to the fact that he is unemployed and that his wife's modest income is fully devoted to meeting the living expenses of his family, with the result that any adverse costs order would be financially catastrophic to both him and his family (paragraphs 8-9). He says that if he is unable to obtain a protective costs order he will be forced to abandon his application for judicial review (paragraphs 10-11, 32-35 and 50). He referred to the disparity of financial resources as between himself (no income) and the PCA (publicly funded) (paragraph 31).
14. The remainder of Mr Mizrachy's affidavit contains legal argument to the effect that (i) his complaint raises issues of public importance (paragraphs 13-28) (ii) there is no alternative appeal mechanism available (paragraphs 29-30). He then set out his arguments in favour of the protective costs order based on English and Bermuda cases (paragraphs 36-41).
15. The PCA responded in a short affidavit of Ms Charlene Scott, the deputy chair of the PCA, dated 23 December 2025. Ms Scott did not respond to any of the legal arguments but referred to the fact that Mr Mizrachy's statements as to his financial circumstances could easily be supported by some documentary evidence. Ms Scott also deposed that the PCA did conduct a thorough investigation of Mr Mizrachy's complaint but did not do so in the way the Mr Mizrachy thinks it should have. Ms Scott referred to the findings of fact made in the Magistrates Court and the Supreme Court and Court of Appeal (paragraph 8). Ms Scott also indicated that the PCA was satisfied (and remains satisfied) that the investigations conducted by the Professional Standards Department of the Bermuda Police Service were thorough and appropriate and the PCA agreed with their conclusions (paragraph 10).

16. Ms Scott noted that even if the court were to agree that there is some element of public benefit in the proceedings that justified a protective costs order, Mr Mizrachy should not be entitled to recover his costs against the PCA because he is a litigant in person and will incur no significant costs (paragraph 9).
17. Mr Mizrachy replied in an affidavit dated 7 January 2026. That affidavit was argumentative. It discusses what the PCA does not dispute (paragraphs 5-7), why he should not have to provide evidence of his means (paragraphs 8-11) why his case is brought for the public benefit (paragraphs 12-17) and why he should be allowed to recover his costs as an unrepresented person (paragraphs 18-22). Mr Mizrachy concluded by stating that merits of his underlying claim are not relevant to the determination of the protective costs order application.

The arguments

18. Mr Mizrachy's written arguments were lengthy and detailed. The court has read them carefully and thoroughly, and no disrespect is intended by not setting them all out in full here. The main points Mr Mizrachy made are set out below.
19. Mr Mizrachy referred to the the principles set out in **R (Corner House Research) v Secretary of State for Trade and Industry**² ("Corner House") that set the framework for the grant of a protective costs order require the court to be satisfied that
 - a. The issues raised in the proceedings are of general public importance;
 - b. The public interest requires those issues to be resolved;
 - c. The applicant has no private interest in the outcome of the case;
 - d. Having regard to the financial resources of the applicant and the respondent and the amount of costs likely to be involved, it is fair and just to make the order;
 - e. If the order is not made, the applicant will probably discontinue the proceedings and will be acting reasonably in doing so.
20. Mr Mizrachy submitted that the **Corner House** principles must be applied flexibly depending on the circumstances of the case³. He further submitted that the requirement for a public interest may be disapplied or interpreted to allow a degree of private interest where the main issues in the case are of such a nature to justify the grant of relief to enable matters of genuine public interest to be properly ventilated⁴.
21. Applying those principles to the facts of the present case Mr Mizrachy submitted that his application engages issues of general public importance including the process by which the PCA handles complaints, the length of time it takes to do so, and the interpretation of section 12 of the Act. He submitted that these issues affect all complaints to the PCA and raises questions whether (i) whether the PCA actually investigates complaints or merely dismisses

² [2005] EWCA Civ 192.

³ **Morgan & Anor v Hinton Organics (Wessex) Ltd** [2009] EWCA Civ 107; **R (Compton) v Wiltshire Primary Care Trust** [2008] EWCA Civ 749; **R (APG on Fair Business Banking) v Financial Conduct Authority** [2023] EWHC 1662 (Admin).

⁴ **R (Garner) v Elmbridge Borough Council** [2010] EWCA Civ 1006.

them without proper enquiry (ii) whether the PCA follows procedures properly (iii) whether the PCA interprets and applies section 12 correctly. This he submitted was all the more important where there is no other available remedy to challenge the decision of the PCA to dismiss a complaint.

22. Mr Mizrachy went on to submit that the issue is whether the PCA is guilty of systemic breaches of process and procedure that are not isolated to this case but apply across all cases which are handled by the PCA. He also submitted that police accountability mechanisms are of fundamental public importance citing **R (Officer W80) v Director General of the Independent Office for Police Conduct**⁵.
23. Mr Mizrachy submitted that while he has a personal interest in the outcome of the application, the remedies he seeks are public law remedies, not private law damages, and therefore, applying the **Corner House** principles flexibly, his personal interest in the outcome should not prevent the court from recognising the public interest in the determination of the issues. He submitted that all cases start with a private interest of some sort. Therefore, applying the approach taken in **R (Compton) v Wiltshire Primary Care Trust**⁶, this court should consider that this is in reality a case about the public interest in the supervision of the PCA's administration of the complaints procedure under the Act.
24. As to financial considerations, Mr Mizrachy submitted that his own evidence as to his lack of means was uncontested, and that there was no evidential burden on him to prove a negative by having an intrusive examination of his personal financial circumstances⁷. He pointed to the disparity between his own circumstances and the fact that the PCA is a publicly funded body. Mr Mizrachy submitted that he would be faced with financial ruin if he was made the subject of an adverse costs order and the failure to obtain relief would mean he would have to abandon his application.
25. Finally, Mr Mizrachy submitted that there was a public interest in the resolution of the issues relating to police accountability that were enhanced by the absence of any statutory appeal mechanism. He submitted that because no other applications have ever been made in the past, it was likely that this would be the only opportunity for the court to examine the issues he wished to raise, and so if a protective costs order were refused, the public would be deprived of the benefit of the court's analysis and guidance for future cases.
26. Mr Mizrachy submitted that this application therefore fell within all the conditions set out in **Corner House**, applied flexibly in the particular circumstances of the case and urged the court to make the protective costs order in the terms sought.

⁵ [2023] UKSC 24. **R (Public Interest Lawyers) v Legal Services Commission** [2010] EWHC 3259 Admin was also cited as an example of where a private interest did not override the public interest element that justified a protective costs order.

⁶ Cited above.

⁷ Citing **Garner** (above).

27. In answer to these arguments, Mr Masters submitted on behalf of the PCA that the principal reason why the application should be refused is that properly analysed and understood, the judicial review application does not raise any issues of general public importance at all, and the result will rest upon the application of well-established principles of administrative law.
28. Mr Masters referred to the underlying facts, and while (if true) the comments alleged to have been made by the police officer may be deplorable and worthy of justifiable complaint, the relief sought is personal to Mr Mizrachy.
29. In addition, Mr Masters submitted that although the test for the grant of leave to issue judicial review proceedings was low, the court should not disregard the context and all the circumstances in its assessment of the application for the grant of what is extraordinary relief, and that Mr Mizrachy has already engaged in the appeal process in relation to the very same facts and circumstances which form the basis of his claim in the judicial review proceedings.
30. Mr Masters also submitted that the issues of systemic problems with regard to the police complaints process are not supported by any evidence, and the events that are the subject of the application are by now stale and not of general public interest. Mr Masters also submitted that the court can take into account the findings made by the Magistrates' Court as to Mr Mizrachy's credibility in assessing whether this is a case which justifies the making of a protective costs order.
31. Mr Masters submitted that the elements of public interest that Mr Mizrachy relies upon are (in reality) window-dressing to disguise the true underlying nature of the claim. The real nature of the claim Mr Masters submitted is to seek declarations which are private remedies that reflect Mr Mizrachy's private interest in the outcome of the proceedings. It was further submitted that the terms of the prayer for orders for *mandamus* show that the true purpose of the proceedings is to compel the PCA to conduct an investigation in a manner which is satisfactory to Mr Mizrachy.
32. Mr Masters criticised Mr Mizrachy's evidence as to his financial circumstances as being insufficient to demonstrate an inability to fund the litigation and cast doubt on the averment that Mr Mizrachy would abandon the proceedings given the energy and determination he has shown with respect to the other litigation in which he has been engaged. Mr Masters submitted that it was not appropriate for the public purse to bear the entire costs burden of these proceedings.

The court's evaluation

33. The general rule in all civil litigation is that the costs of the proceedings are paid by the unsuccessful party⁸, unless, in the exercise of the court's discretion, there is a proper reason to depart from that principle. Mr. Masters submitted that this is the starting point for any discussion on the proper consideration of making a protective costs order, because the effect of the protective costs order is to reverse the general rule in advance of the hearing of any of

⁸ RSC Order 62 rule 3 (3) provides: "*If the court in the exercise of its discretion sees fit to make any order as to the costs of any proceedings, the Court shall order the costs to follow the event, except when it appears to the Court that in the circumstances of the case some other order should be made as to the whole or any part of the costs.*" (Emphasis added).

the merits of the applicant's claims, irrespective of the result of the litigation, and therefore represents an extraordinary measure.

34. Accordingly, Mr Masters submitted, correctly in the court's view, that any departure from the general rule must be fully justified by the circumstances of the particular case. Mr Masters relied upon the earlier case of **R v Lord Chancellor ex p Child Poverty Action Group**⁹ ("**Child Poverty Action Group**") as setting the framework for the development of the principles in later cases, and submitted that the principles set out in **Corner House, Garner, and Compton** on which Mr Mizrachy relied must be read against the backdrop of the earlier statements of general principle. The court agrees with and accepts Mr Masters' submission and agrees that this is the correct approach for the court to take in applying the principles in the later cases.
35. In particular, the fundamental approach the court is required to take was explained by Dyson J (as he then was) in **Child Action Poverty Group** in the following terms¹⁰:

"In my judgment, the discretion to make pre-emptive costs orders even in cases involving public interest challenges should be exercised only in the most exceptional circumstances. The starting point must be the basic rule encapsulated in RSC Order 62 rule 3 (3) that costs follow the event. It is true that the role of the court in all public law cases is to ensure that public bodies do not exceed or abuse their powers, but the parties to such proceedings are nevertheless adverse as is the litigation.....I accept the submission of Mr Sales that what lies behind the general rule that costs follow the event is the principle that it is an important function of rules as to costs to encourage parties in a sensible approach to increasingly expensive litigation. Where any claim is brought in court, costs have to be incurred on either side against a background of greater or lesser degrees of risk as to the ultimate result. If it transpires that the respondent has acted unlawfully, it is generally right that it should pay the claimant's costs of establishing that. If it transpires the claimant's claim is ill founded, it is generally right that it should pay the respondent's costs of having to respond. This general rule promotes discipline within the litigation system, compelling parties to assess carefully for themselves the strength of any claim.

The basic rule that costs follow the event ensures that the assets of the successful party are not depleted by reason of having to go to court to meet a claim by an unsuccessful party. This is as desirable in public law cases as it is in private law cases....It is plainly right that in the normal run of the mill public law case, the unsuccessful party should pay the other side's costs. To this Mr Drabble would respond by saying that typical judicial review proceedings involve adversarial litigation, in which the applicant is seeking to promote or protect his or her own private interest: it does not raise an public interest challenge as defined. Nonetheless, in considering whether, and in what circumstances, there should be a departure from the basic rule that costs follow the event in public interest challenge cases, in my view it is important to have in mind the rationale for that basic rule, and that it is for the applicants to show why, exceptionally, there should be a departure from it."

⁹ [1999] 1 WLR 347.

¹⁰ At pages 355 F to 356 E.

36. Dyson J went on to conclude¹¹:

“I conclude, therefore, that the necessary conditions for the making of a pre-emptive costs order in public interest challenge cases are that the court is satisfied that the issues raised are truly ones of general public importance and that it has a sufficient appreciation of the merits of the claim that it can conclude that it is in the public interest to make the order. Unless the court can be so satisfied by short argument, it is unlikely to make the order in any event. Otherwise, there is a real risk that such applications would lead in effect to dress rehearsals of the substantive applications, which, in my view, would be undesirable. The necessary conditions are not, however, sufficient for the making of an order. The court must also have regard to the financial resources of the applicant and the respondent, and the amount of costs likely to be in issue. It will be more likely to make an order where the respondent has a superior capacity to bear the costs of the proceedings than the applicant, and where it is satisfied that, unless the order is made, the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.”

37. It is therefore clear that the grant of a pre-emptive (or ‘protective’) costs order is only to be made exceptionally, having regard to the circumstances of the particular case, taking into account the point of general public interest involved, the likely costs that will be incurred, the relative resources available to the parties and the likelihood that if a protective costs order is not made, the applicant will reasonably decide to abandon the claim.
38. Dyson J disapproved of engaging in a mini trial of the issues but stated that the court must be able to see from a short assessment of the matters in issue that the case genuinely involves a point of general public importance. Particular mention is made of this because Mr Mizrachy’s submission was to the effect that the court cannot look at the merits of the claim at all in its assessment of the application for a protective costs order. He submitted that once the court has given leave to commence judicial review proceedings there cannot be any merits review at all and the court must proceed on the basis that the case is sufficiently meritorious to justify a protective costs order.
39. This is obviously not a correct interpretation of the legal position. It is clear from Dyson J’s judgment that the court must have “...a sufficient appreciation of the merits of the claim that it can conclude that it is in the public interest to make the order.” This must mean that the court must make an initial high-level assessment as to whether the case involves matters of general public importance for the purposes of the grant of an exceptional order reversing the ordinary costs rules. This is a different assessment from the initial merits assessment that the court engages in when determining whether the judicial review proceedings raise an arguable claim.
40. Having set this as the starting point for the analysis, I turn to the application of the principles developed in **Corner House** and the subsequent cases to the facts and issues in this case¹².

¹¹ At page 358 C-E.

¹² The relevant principles have been applied in different contexts by the Bermuda courts in the past and so the concept of protective costs orders has been accepted and adopted and needs no further endorsement by the court in the present application: see eg **BEST v Minister of Home Affairs** [2017] SC (Bda) 112 per Kawaley CJ at [5] to [9] and **Matthie v Min of Education** [2016] SC (Bda) 95 Civ.

Public interest

41. The court set out a summary of the relevant considerations in **Corner House** which are quoted at paragraph 19, which draws heavily from the passages cited from Dyson J's judgment in **Child Poverty Action Group**. The first consideration is that the issues in the case must raise issues which are of general public interest.
42. Mr Mizrachy says that the issues raised in his application involve consideration of the process adopted by the PCA in dismissing complaints on a summary basis, and whether the PCA routinely dismisses complaints without investigation, follows its procedures properly in the cases it handles, and whether it interests and applies its powers under section 12 of the Act properly. Mr Mizrachy said the application for judicial review is about the process, not the outcome. Mr Mizrachy submitted the case was about the accountability of the police.
43. Mr Masters submitted that this is not in reality what the issues in the case will involve. He submitted that the true purpose of the proceedings is to vindicate a personal complaint about the way in which he was treated by the police officer concerned and to achieve a 'proper' investigation of his complaint. Mr Masters submitted that the judicial review proceedings will be determined by the ordinary application of administrative law principles, and there is nothing particular about the facts of the case which will engage new principles or raise points of general public importance. Mr Masters submitted that the question of public importance is to be assessed across a spectrum, and even though there may be issues raised in any particular case (including this one) that may attract public's attention, that is not the same thing as raising an issue of public importance. If there is any issue of general public interest, Mr Masters submitted it is very limited.
44. In assessing the question whether the application involves points of general public importance, the court is mindful that its role in judicial review proceedings is supervisory, and that the court will only intervene to overrule or quash a decision of a public authority where it is necessary to do so in a particular case to achieve justice. The court's role is not to conduct an examination of the processes applied generally or to investigate whether (for example) the PCA routinely dismisses complaints summarily without investigation. The court's examination of the facts will be limited to the facts of this particular case, and its decision will affect only the decision that was made in this case.
45. It is true of course that a decision in one case may raise public awareness or concern about the general approach taken by a public authority that will prompt the Executive to conduct a more detailed review of the practice of a public authority, or cause the Ombudsman to undertake an investigation, but that is not the court's function. The court's role is to examine whether on the facts of a particular case the relevant decision was lawfully and properly made.
46. In this case, the court will examine the facts and determine whether the PCA exercised its power to take no further action in relation to Mr Mizrachy's complaint within the proper bounds and limits of its statutory authority, whether the procedure it followed in so doing was fair and in accordance with ordinary notions of natural justice, and whether its conclusion was one which a reasonable body could reach (based on the matters it took into account or left out of account).

47. It seems to the court that on the spectrum of general public interest or importance, the issues in this case lie very much at the shallow end of the pool. It may well be that the time taken to address Mr Mizrachy's complaint is the subject of legitimate complaint, and it may be that the process that was adopted by the PCA is open to legitimate criticism (about which the court makes no comment or judgment at this stage), but it does not seem to the court that the issues raised by Mr Mizrachy are such as to meet the general public interest requirement for the making of a protective costs order. The core of the judicial review proceedings is in essence a claim for the redress of a private grievance, not an issue of general public law importance, even though some aspects of the case may attract some public attention or inquisitiveness.
48. Although the court has not engaged in any assessment of the ultimate merits of the case, which will be determined at a trial, taking a bird's eye view, the case involves a determination of whether the PCA was entitled to accept the robustness and integrity of the conclusions of the Professional Standards Department of the Bermuda Police Service in reaching its conclusion that Mr Mizrachy's complaint did not require further action. The court agrees with Mr Masters' submission that the points raised will be decided by the application of conventional administrative law principles.
49. Following the guidance of Dyson J, the court is not satisfied that the issues raised are truly ones of general public importance, even applying the flexible and unrigid approach to the interpretation of that term required by **Compton**. Therefore, in the court's judgment, the application fails to meet the requirement of subparagraph (a) of the criteria described in the **Corner House** summary quoted above. As a result, the case does not justify exceptional treatment on the issue of costs.
50. If I were to be held to be wrong on that and to have taken too narrow an approach on what amounts to an issue of general public importance, I would also consider that even if there is a point of general public importance, the issue is not one which "*the public interest requires it to be resolved*". This is because the circumstances giving rise to the application arise out of a particular incident involving specific facts, and the PCA's decision is based on the investigation conducted into those facts based on Mr Mizrachy's complaint, which is unique to him. Accordingly, the application (also) fails to meet the requirement of subparagraph (b) of the **Corner House** summary quoted above, applying the flexible and unrigid approach to what the public interest requires.

No private interest

51. The fact that Mr Mizrachy is not seeking private law damages does not of itself remove the element of his private interest in the claim. Mr Mizrachy's purpose is plainly to seek the correction of what he considers to have been an infringement of his right to be treated with proper courtesy and respect by the police officer in the execution of his duty, free from abuse in terms of racially insulting language or other unfair or degrading treatment. This is not a claim which would (normally) result in damages, so the absence of a damages claim in the prayer for relief is not determinative of the nature of the claim.

52. The court of course recognises and accepts that many if not most claims for judicial review arise out of a personal grievance or the infringement of a private interest, and that a mixture of a private interest and a public interest may not deprive an applicant from protective costs order relief. However, in this case, the element of private interest is dominant throughout, and the element of general public interest is (for the reasons already given) minimal. Therefore, in the court's view, the application fails to meet the requirement of subparagraph (c) of the **Corner House** summary quoted above.

Financial disparity

53. The court accepts the evidence given by Mr Mizrachy that he is unemployed and that his resources are no match for the resources of the PCA which is publicly funded. However, the court also recognises that the public funding is limited and prescribed by annual appropriations. The court also accepts Mr Mizrachy's evidence that an adverse costs order would have a very negative impact on his personal financial position. It is difficult to go further than that in the absence of any detailed evidence. Although the case is not one in which the costs are likely to be very large (the matter has been listed for a half day's hearing), the costs are obviously going to include preparation and could run to many thousands of dollars which would be a significant financial obligation. The court also accepts that Mr Mizrachy would be acting reasonably if he decided to withdraw his application in the face of the possibility of being made liable for a costs burden which he could not meet.
54. However, the court does not consider that it would be fair and just to make the protective costs order in the present circumstances. The judicial review proceedings relate to the dismissal of a complaint about the conduct of an investigation by a police officer into Mr Mizrachy's altercation with someone in a parking lot which resulted in Mr Mizrachy's trial and conviction for an offence for criminal damage. The scale of the offence was minor, and the amounts involved were small (both as to the value of the damage and the fine imposed). Mr Mizrachy has appealed to the Supreme Court and Court of Appeal and now intends to appeal to the Privy Council, as he is fully entitled to do under the law.
55. It would in my judgment be entirely contrary to ordinary notions of common sense and proportion for the court to grant a protective costs order to enable Mr Mizrachy to ventilate his personal concerns over his treatment and the dismissal of his complaint to the PCA about that treatment all at the PCA's expense. The point and purpose of the policy behind the general rule that the 'loser pays' is to inject a degree of risk to act as a brake on a litigant's natural impulse to seek redress for any injury to his rights without regard to the consequences.
56. If Mr Mizrachy considers that his grievances are well founded and that he has good prospects of success, then it is his right to pursue the judicial review proceedings with all the energy and other resources at his disposal. However, he must bear the risk that if his claim fails, he may be liable to pay the PCA's costs of defending the claim.

57. The court considers that while Mr Mizrachy has established that he falls within the financial requirements of subparagraphs (d) and (e) of the **Corner House** summary above, he fails to meet the requirement of showing that it is just and fair that the PCA should be deprived of the ability to recover its costs against him if his claims are not vindicated. It is notable that Mr Mizrachy himself seeks to recover his own costs against the PCA if he succeeds in his claims. This is permissible under the costs rules which make some allowance to a litigant in person to recover a proportion of costs assessed on a taxation. However, it would be asymmetric for Mr Mizrachy not to be at risk as to liability in costs if his claim fails.
58. Therefore, for all the reasons given above, both individually and collectively, the court rejects Mr Mizrachy's application for a protective costs order. The court will reserve the costs of the application pending determination of the judicial review proceedings.

27 March 2026



THE HON. MR. JUSTICE ANDREW MARTIN
PUISNE JUDGE OF THE SUPREME COURT