THE HIGH COURT

[Record No. HP 2025/6685]
[2026] IEHC 479

BETWEEN

KERSTIN MEY

PLAINTIFF

AND

UNIVERSITY OF LIMERICK

DEFENDANT

JUDGMENT of Ms Justice Bolger dated the 14th day of July 2026

1. This is the plaintiff's application for interlocutory injunctive relief seeking to restrain the defendant from proceeding with any investigation in connection with the proposition that the plaintiff misled the Public Accounts Committee or Ms Caroline Jenkinson in relation to the circumstances surrounding the non-attendance of a senior employee of the defendant at the meeting of the Public Accounts Committee on 18 May 2023, pending the trial of the action herein. Central to this case is whether the terms of a settlement agreement between the parties permit the investigation to proceed and/or whether the provisions of the Protected Disclosures Acts 2014, as amended, require the investigation to proceed.

2. For the reasons set out below, I am granting the plaintiff the injunctive relief she seeks.

Background

3. An understanding of the case requires a consideration of what led to the settlement agreement between the parties dated 14 June 2024 and what has occurred since then. The plaintiff has been employed by the defendant University since April 2018. In October 2021, she was appointed as President. In 2023, the defendant purchased a property for student accommodation (hereinafter referred to as "the Rhebogue transaction") which led to various investigations, controversies and extensive media coverage. On 18 May 2023, a delegation from the defendant, including the plaintiff as President, attended at a meeting of the Oireachtas Public Accounts Committee (which meeting is hereinafter referred to as "PAC1"). The plaintiff was asked why Mr Flaherty, the then Chief Corporation Officer (hereinafter referred to as "the CCO") was not there. The plaintiff stated that the CCO had a long-standing engagement. On the following day, the Provost and then Deputy President, Prof Shane Kilcommins, who had also attended at PAC1, emailed the plaintiff and the CCO, stating that it had been suggested the previous day at PAC1 that the CCO was not available due to a long-standing engagement. The plaintiff said that the CCO was on a day's leave. Prof Kilcommins replied saying that may be true but that they also knew that he was with them the night before PAC1, the morning of PAC1 and following PAC1 and that it was vital that an accurate account be given to PAC1. The CCO replied to Prof Kilcommins and copied the plaintiff, stating that he had personal commitments on the day, due to which he was unavailable to attend PAC1 and was on a day's leave. The plaintiff also emailed Prof Kilcommins to confirm that she had received and approved an annual leave request for the CCO for that day.

4. On 15 August 2023, a protected disclosure was made to the Minister which was forwarded to the defendant and determined by the defendant's Special Disclosures

Group to be a protected disclosure. The defendant appointed Caroline Jenkinson, an independent industrial relations specialist and investigator, to investigate the reply given by the plaintiff at PAC1 to the question of why the CCO was not brought to the meeting. Ms Jenkinson was appointed pursuant to written Terms of Reference which provide, *inter alia*, that:

- The scope of the investigation shall be limited to the alleged relevant wrongdoings;
- The investigator will conduct separate interviews with persons she deems relevant to the investigation;
- All employees are required to cooperate fully;
- The investigator may also seek documents, written submissions and clarifications from any relevant person.

The Terms of Reference required the investigator, on conclusion of her interview enquiries, to provide a written report to the defendant's Disclosures Group setting out:

- "A summary of the process undertaken, to include reference to the dates and details of any interviews undertaken and any documentation considered, all of which shall be appended to the Report;
- An outline of the accounts submitted in relation to the Alleged Relevant Wrongdoings and, based on the Investigator's review of same, making findings on the balance of probabilities as to whether the allegations of wrongdoing or any of them are made out."

5. The plaintiff attended an interview with Ms Jenkinson in February 2024. Ms Jenkinson issued her report on 2 April 2024 and a copy was furnished to the plaintiff on 9 April 2024. The report confirmed that Ms Jenkinson had interviewed the plaintiff, the CCO and Seamus Given, a partner at Arthur Cox Solicitors who had been identified by the plaintiff as a person for Ms Jenkinson to interview. It was clear that Ms Jenkinson decided it was unnecessary to interview anyone else.

6. The CCO gave Ms Jenkinson the following account for why he was not present at the PAC1 meeting. He said he had told the plaintiff he had a family commitment that day for which he had booked a day's leave but that he would assist with preparation for the meeting. On the night before the PAC1 meeting, he was in Dublin for personal family reasons but as the defendant's delegation was staying in the same hotel, he participated in the preparation meetings and had dinner with the delegation and, on the following day, he engaged in his personal activities with his family. When he went back to collect his car from the hotel carpark, he bumped into the delegation as they arrived back from the PAC1 meeting and was with them for approximately 30 minutes. He then left them to attend his personal commitments for the rest of the day.

7. The plaintiff told Ms Jenkinson that she explained to PAC1 that the CCO had a long-standing personal engagement and had requested and been approved for leave to take effect at that time. He was in Dublin on the evening before the PAC1 and sat with the delegation when they went through their preparation for the next day and had been part of the preparation team. He had booked into the same hotel, paid for it of his own expense, and was there at breakfast. After the PAC1 meeting when the delegation returned to the hotel, she was surprised to see the CCO there and he was surprised to see them. The delegation departed and the CCO stayed on in Dublin.

8. Ms Jenkinson’s report of 2 April 2024 stated that she was satisfied that the plaintiff and the CCO provided her with information in a truthful and honest manner. She was satisfied that the answers given to the questions raised at PAC1 when the plaintiff was asked about the non-attendance of the CCO were factual and correct. Ms Jenkinson accepted that, while the CCO may have been in Dublin on the day and had discussions with the delegation, he was on a day's leave and was attending to personal matters on the day. She said she was completely satisfied that the plaintiff gave truthful and correct answers to questions raised at PAC1 regarding the non-attendance of the CCO.

9. By letter dated 2 April 2024, the plaintiff was told that the defendant intended to proceed with disciplinary action against her in relation to the Rhebogue transaction. Sometime between then and 9 May, the plaintiff was certified as unfit for work. Prof Kilcommins was appointed as Acting President during her absence.

10. On 9 May, a different delegation from the defendant attended another PAC meeting (hereinafter referred to as "PAC2") about the Rhebogue transactions. The plaintiff was not in attendance as she was on sick leave. The delegation was led by Prof Kilcommins as Acting President. A committee member of PAC2 enquired about the CCO's non-attendance at the previous PAC1 meeting and Prof Kilcommins told them that the CCO had asked him to attend PAC1 because the CCO did not wish to attend due to the ongoing investigation into the Rhebogue transaction that he had sponsored. Prof Kilcommins told PAC2 that the CCO had been present with the defendant's delegation before and after the meeting with PAC and that Prof Kilcommins understood the CCO was communicating by text with some members of the delegation during the PAC1 meeting.

11. The defendant's deponent, Ms Keane, describes (at paragraph 13) Prof Kilcommins as giving "*a different account*" of the CCO's non-attendance at PAC1 to that given by the plaintiff to Ms Jenkinson during her investigation and says (at paragraph 45) that the statements made at PAC2 were damaging to the defendant's reputation. The affidavit exhibits a report submitted by the Chair of the University's Protected Disclosures Group to the Audit and Risk Committee on 23 May 2024 which

Ms Keane says was considered by the ARC at its meeting on 27 May 2024. An extract from the minutes of that meeting was exhibited which confirmed that the report was accepted. The report states at paragraph 9.2:

> *"It would appear to the Disclosures Group that information relevant to the investigation was provided to the PAC which may not have been available to the investigation. The Disclosures Group does not consider that assessing this information now is a matter for it, because it had, prior to the PAC, accepted the Investigation Report and its functions under the Policy have been discharged"*

12. On 14 June 2024 following a three-day mediation, the plaintiff and the defendant entered a written settlement agreement. The evidence put before this Court, in particular by way of the report of 23 May and the minutes of the meeting of 27 May (referred to at paragraph 11 above) is to the effect that the defendant had concerns arising from what was said at PAC2 before the settlement agreement was executed on 14 June 2024.

13. The terms of the settlement agreement include paras. 20 and 23 which provide as follows**:**

> *"20. The University warrants that it shall not proceed with any disciplinary action in respect of the Employee in relation to any matters to the date of this Agreement. The warranty shall not be applicable if, in the opinion of the University, evidence emerges that warrants an investigation on the grounds of serious misconduct and/or fraud on the part of the Employee.*
>
> *……*

> 23. *The Employee shall provide full co-operation with any processes being conducted by the University, or in relation to the University, including but not limited to any disciplinary processes, reviews, investigations by the Higher Education Authority and processes before an Oireachtas Committee or any other regulatory body."*

14. Some weeks after the parties entered the settlement agreement, the Chair of the defendant's Governing Audit and Risk Committee wrote to the Chair of the Special Disclosures Group by letter dated 4 July 2024 advising them to consider whether any recommendations arose at that time from the Disclosure Group for the consideration of the Audit and Risk Committee. In the letter the Chair stated:

> "*Specifically, are you in fact recommending that the matters referred to at Section 9 be referred back to the investigator to allow for an appropriate and fair process to be undertaken in examining this additional information and providing persons deemed relevant by her to comment and respond to same within an updated Protected Disclosures Report?"*

A meeting of the Special Disclosures Group was held on 20 August 2024. The minutes of the meeting were exhibited, much of which were redacted, but they do confirm the following under the heading '*Matters Agreed / Agreed Approach to Investigation*':

> "*The Disclosures Group will write to the Chair of the Audit and Risk Committee and confirm that the recommendation is that the information referenced in Section 9 of the PD Report to the ARC be referred back to Ms Caroline Jenkinson, the original investigator. This will be done with a view to putting in place an appropriate and fair process to examine these additional matters"*

15. The Chair of the Special Disclosures Group wrote to Ms Jenkinson over two months later by letter dated 24 October 2024 stating that "*other relevant information*" from PAC2 had arisen which the Group was satisfied came within the scope of the Alleged Relevant Wrongdoing in the Terms of Reference to her investigation, which they were referring back to her investigation to be considered "*under the existing investigation terms of reference".*

16. Over a year after the settlement agreement was executed, the plaintiff received correspondence dated 2 July 2025 from the Chair of the defendant's Protected Disclosures Group advising her that they had requested Ms Jenkinson to re-examine the issues she had previously investigated, i.e. the impugned process. The Chair said they were not privy to the terms of the settlement agreement and that, in any event, protected disclosures were not encompassed by any such agreement (a point to which I return further below). By the time they wrote to the plaintiff again on 18 July, some two weeks later, they seem to have familiarised themselves with the terms of the agreement as they expressly referred to clause 20 thereof and asserted a purported entitlement to continue with the impugned process which they said was not prohibited by clause 20 of the agreement.

Submissions by the parties

17. The plaintiff does not criticise the procedure that Ms Jenkinson has indicated will be adopted within the impugned process. Rather, the plaintiff's concern is with the process being permitted to continue at all as she says it will cause her irreparable harm as it is focused solely on whether she is guilty of a relevant wrongdoing. She says this is made clear by the terms of reference referred to above at para. 4, and is precluded by the terms of the settlement agreement. She says that the facts that seem to have given rise to the defendant's decision to request Ms Jenkinson to re-examine the issues does not constitute the emergence of new evidence as provided for by clause 20 of the settlement agreement.

18. The defendant accepts that no such new evidence has emerged but relies on what it contends is its statutory duty pursuant to s. 6A of the Protected Disclosures Act 2014, as amended, to diligently follow up on alleged wrongdoing and to take appropriate action to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned. The defendant says, at para. 53 of its written submissions, that it has *"both a statutory obligation and legitimate interest in ensuring that investigations into protected disclosures are conducted in a diligent manner, and on the basis of complete evidence*". It says that additional information emerged after Ms Jenkinson submitted her report and that clause 23 of the agreement "*requires*" the plaintiff to cooperate in this investigation.

19. The defendant also argues that the plaintiff's application is premature, relying on the decision of the Supreme Court in *Rowland v An Post* [2017] IESC 20 and that the plaintiff is, in effect, seeking a *quia timet* injunction without having established the required real and substantial risk to her. The defendant says that the terms of the settlement agreement and the defendant's statutory obligations both entitle and require them to continue with the impugned process from which evidence may emerge. If such evidence does emerge, the defendant says that the plaintiff will retain all her rights to fair procedures within any such investigation or whatever process may follow therefrom.

20. The defendant's Chancellor, Prof Brigid Laffan, has sworn an affidavit setting out the harm and prejudice that she says the defendant will suffer if the within application is granted, asserting the following:-

(1) At para. 11, she states that delay in the finalisation of a protected disclosure investigation strikes at the heart of the transparent communication and rebuilding of trust envisaged by a plan adopted by

the University's Executive Committee on 10 July 2024 which she describes as a 10-point reputational rebuilding plan.

(2) At para. 15, she describes the current position as the University being in receipt of a report over which significant doubt has been cast which she says is an unsatisfactory position for the University, the author and for the plaintiff.

(3) At para. 17, she characterises the situation as particularly unsatisfactory, noting that the investigation arose from a protected disclosure. In such circumstances, the University is under a statutory obligation to diligently examine the alleged wrongdoing and to take appropriate action, having regard to the nature and seriousness of the issues involved.

Discussion

21. In order to secure the interlocutory relief that the plaintiff seeks, she must firstly satisfy the court that she has established a fair or serious question that she will succeed at trial, after which the Court will consider the Balance of Convenience. The defendant contends that it is (i) permitted by the terms of the settlement agreement to continue with the impugned process and (ii) required by its statutory obligations pursuant to s. 6A of the Protected Disclosures Act to do so. I will address separately whether the plaintiff has established a fair or serious question to be tried that the defendant is neither permitted nor required to proceed with the impugned process.

(1) The settlement agreement

22. I accept the defendant's argument that the proper construction of the settlement agreement falls to be interpreted in accordance with the principles accepted in cases such as *Law Society of Ireland v Motor Insurance Bureau of Ireland* [2017] IESC 31 in which Clarke J (as he was then) warned against an overdependence on purely textual analysis which he said ran the risk of ignoring the fact that almost all text requires some degree of context for its proper interpretation.

23. The defendant warranted, at clause 20, not to proceed with "*any disciplinary action in respect of the Employee in relation to any matters to the date of this Agreement*". I wish to address the following three elements of the language used in clause 20: (i) warrant; (ii) disciplinary action; and (iii) matters at the date of the agreement.

(i) Warrant

24. The Oxford English Dictionary defines warrant as "*something which protects or authorises*." The use of this word in the settlement agreement denotes a particularly strong commitment to what is being done.

(ii) Disciplinary action

25. The plaintiff's counsel accepts that disciplinary action means a sanction rather than simply a step in a disciplinary procedure. However, he described the impugned process as "*tantamount to disciplinary action by another name*" and asserted that the impugned process was a pretext for embarking on a process that will culminate in disciplinary action.

26. The impugned process, if it is permitted to proceed, seeks to investigate the plaintiff's conduct in relation to what seems to be an alleged conflict between what she said to PAC1 and what Prof Kilcommins said at PAC2 about what he was told by the CCO. The defendant has declined to give undertakings that it will not take disciplinary action against the plaintiff on foot of the impugned process.

27. The narrow wording of the Terms of Reference (set out at paragraph 4 above) focus on whether the reply given by the plaintiff at PAC1 constitutes a serious wrongdoing. The defendant's Special Disclosures Group has previously deemed the wrongdoing alleged in the protected disclosure of 15 August 2023 to be a serious wrongdoing. A finding that a serious wrongdoing was committed is a serious matter and could reasonably be viewed as serious misconduct. It is very clear that this is a serious matter for the plaintiff and for her reputation.

28. The issue of whether the plaintiff's reply to PAC1 constitutes a serious wrongdoing had previously been investigated by Ms Jenkinson and addressed in her report. Ms Jenkinson's report was accepted by the defendant's Special Disclosures Group in April 2024. The Chair of the Special Disclosures Group, in his report of 23 May 2024, which was accepted by the Group at its meeting on 27 May 2024, said that the Group considered it was not for them to assess the information about PAC2 because it had previously accepted Ms Jenkinson's investigation report and its functions under the Policy had been discharged. However, after receiving correspondence from the Chair of the defendant's Audit and Risk Committee, the Special Disclosures Group then recommended that the information be referred back to Ms Jenkinson to be considered under what they referred to as "*the existing investigation terms of reference"* (as set out at 14 above).

29. The defendant's Special Disclosures Group view of the status of Ms Jenkinson's report in April 2024 and its role in assessing the information about PAC2 seems to have changed after its Chair was written to by the Chair of the defendant's Audit and Risk Committee.

30. In all of those circumstances, the plaintiff's concerns that the impugned process is a pretext for disciplinary action against her are not groundless.

(iii) Matters at the date of the agreement

31. Clause 20 refers to "*any matters to the date of this Agreement*" but provides for one matter to be excluded from the terms of the agreement by clause 20, where "*evidence emerges that warrants an investigation on the grounds of serious misconduct and/or fraud on the part of the Employee*". If the defendant had wanted to reserve to itself a wider right to recommence the Jenkinson investigation (other than in relation to evidence emerging which I address further below), it could have done so expressly, for example by providing that the within terms of settlement do not preclude the University from recommencing the Jenkinson investigation in accordance with the Terms of Reference. The defendant did not do so.

32. By the time the parties executed the settlement agreement on 14 June 2024 straight after a three day mediation, the defendant was aware of what had been said at PAC2 and the controversy that it gave rise to in the public arena. The defendant was, or ought to have been, also aware of the report that the Protected Disclosures Group considered at its meeting of 27 May 2024 about what was said at PAC2. There is a serious question to be tried that the plaintiff signed the settlement agreement and agreed to a demoted position with less favourable contractual terms and conditions, in order to resolve all matters up to the date of the agreement including whatever concerns the defendant had at that time about what was said at PAC2. There is a serious question to be tried that the impugned process will seek to establish whether the plaintiff engaged in serious misconduct in relation to something that took place before the settlement agreement, and which was a matter of stated concern to the defendant before they executed that agreement.

33. Having regard to (i) (ii) and (iii) above and subject to the circumstances allowing for exclusion by reference to evidence emerging which is addressed further below, I am satisfied that the plaintiff has established a fair/serious case that she will succeed at trial in establishing that the settlement agreement precludes the continuation of the impugned process as a breach of her contractual rights pursuant to the settlement agreement.

Emerging evidence

34. Clause 20 excludes the application of the defendant's warranty "*if, in the opinion of the University, evidence emerges that warrants an investigation on the grounds of serious misconduct and/or fraud on the part of the Employee*". The defendant says no such evidence has yet emerged and it has not formed any such opinion, but that evidence might emerge from the impugned process. The defendant says that the plaintiff is moving prematurely as per *Rowland* as the process is not irremediable. The defend ant also asserts that it's actions are under a statutory process rather than a disciplinary action.

35. Perhaps unusually for an injunction to restrain an employment process, the plaintiff's focus is not on fair procedures as much as the substantive issues that the impugned process intends to address, as the plaintiff says any such investigation or re-examination is precluded by her settlement of her issues with the defendant including the issues the subject matter of the defendant's concerns after PAC2.

36. The defendant's argument is somewhat circular. It accepts that no evidence has emerged that comes within clause 20 in circumstances where it had, at all relevant times, the transcripts from PAC1 and PAC2 as well as the emails between the plaintiff, the CCO and Prof Kilcommins that were exchanged on the day after PAC1. The Terms of Reference for Ms Jenkinson's investigation only refers to whether the plaintiff committed a serious wrongdoing in her reply to PAC1. Nevertheless, the defendant says such evidence might emerge and, if it does, that the plaintiff will continue to enjoy all her rights to fair procedures within whatever process may follow.

37. The plaintiff has established a fair/serious case that she will succeed at trial in establishing that clause 20 does not apply and that the defendant cannot be permitted to continue with the impugned process in the anticipation that evidence might emerge, given that the plaintiff entered a settlement and accepted lesser terms and conditions of employment in order to draw the line in the sand that she says the settlement agreement represents. It is arguable that to allow the impugned process to continue would lead to an irremediable wrong for the plaintiff, i.e. allow the defendant to ignore the terms of the settlement agreement that the plaintiff entered and for which she says she gave up valuable existing rights.

<u>Clause 23 of the settlement agreement</u>

38. The plaintiff also committed, at clause 23, to "*provide full co-operation with any processes being considered by the University*". As well as a contractual commitment by the plaintiff in her settlement agreement with the defendant, this clause reflects the common law duty of any employee to cooperate with the lawful and reasonable directions of their employer. However, the plaintiff's commitment to do so does not require her to participate in a process which is precluded as a matter of whatever entitlements, including contractual, that she may have.

<u>The Protected Disclosures Act</u>

39. Section 6A of the Protected Disclosures Act 2014, as amended, provides as follows:

> "6A(1) Internal reporting channels and procedures shall include the following:
>
> (a) channels for receiving reports that shall be designed, established and operated in a secure manner that ensures that the confidentiality of the identity of the reporting person and any third party mentioned in the report is protected and prevents access

thereto by persons other than those referred to in *section 6(9)* and any designated person;

(b) acknowledgement, in writing, to the reporting person of receipt of the report not more than 7 days after receipt of it;

(c) the designation of an impartial person or persons who are competent to follow-up on reports (who may be the same person or persons as the recipient of the report) (in this section referred to as a "designated person") who will maintain communication with the reporting person and, where necessary, request further information from, and provide feedback to, that reporting person;

(d) diligent follow-up by the designated person, which shall include at least the following:

(i) the carrying out of an initial assessment, including seeking further information from the reporting person if required, as to whether there is *prima facie* evidence that a relevant wrongdoing may have occurred;

(ii) if, having carried out an initial assessment, the designated person decides that there is no *prima facie* evidence that a relevant wrongdoing may have occurred—

(I) closure of the procedure or referral of the matter to such other agreed procedures applicable to grievances to which a reporting person has access or such other procedures, provided in accordance with a rule of law or enactment (other than this Act), to which a reporting person has access, and

(II) notification of the reporting person, in writing, as soon as practicable, of the decision and the reasons for it;

(iii) if, having carried out an initial assessment, the designated person decides that there is *prima facie* evidence that a relevant wrongdoing may have occurred, the taking of appropriate action to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned;

(e) the provision of feedback to the reporting person within a reasonable period, being not more than 3 months from the date the acknowledgement of receipt of the report was sent to the reporting person under *paragraph (b)* or, if no such acknowledgement was sent, not more than 3 months from the date of expiry of the period of 7 days after the report was made;

(f) the provision to the reporting person, where he or she so requests in writing, of further feedback at intervals of 3 months until such time as the procedure relating to the report concerned is closed, the first such period of 3 months commencing on the date on which feedback is provided to the reporting person under *paragraph (e)*;

(g) the provision to workers of clear and easily accessible information, in such form and manner as the employer considers appropriate for the purposes of this paragraph, regarding—

(i) the procedures applicable to the making of reports using the internal reporting channels and procedures,

(ii) where the employer accepts anonymous reports, the conditions pursuant to which those reports may be accepted and follow-up undertaken, and

(iii) the procedures for making a report to a prescribed person or the Commissioner, as the case may be, in the manner specified in *section 7*, and, where relevant, to institutions, bodies, offices or agencies of the European Union F25 **[**in the manner specified in *section 7B**]**”.*

40. The plaintiff contends that s. 6A does not preclude settlement of issues arising from a protected disclosure or the investigation thereof and points to the plaintiff's demotion and less favourable terms and conditions of employment as constituting "*the taking of appropriate action to address the relevant wrongdoing".* The defendant says that the impugned process is different to a disciplinary investigation as it is an investigation within the framework of the Protected Disclosures Act. This point is scoped out at para. 49 of its submissions where the defendant states:

> *“The Jenkinson Investigation is an investigation of a protected disclosure made to the University through the Minister for Further and Higher Education, Research, Innovation and Science. The University has an obligation under section 6A of the Protected Disclosures Act 2014 and the University’s Protected Disclosures policy to diligently follow-up on alleged wrongdoing and to take appropriate action to address the relevant wrongdoing, having regard to the nature and seriousness of the matter concerned.”*

The defendant contends that its statutory obligation pursuant to s. 6A to follow up on a protected disclosure is not and cannot be affected by a settlement agreement. In effect, the defendant argues that an employee can never agree to compromise an employer's statutory obligation to follow up on a protected disclosure even where the protected disclosure was followed up on previously. The defendant seems to contend that an employer has an unlimited and never-ending statutory obligation to follow up on a protected disclosure.

41. Both parties have been unable to identify case law, including from the Labour Court, about an employee's (or indeed, an employer's) ability to put matters, arising from an employer's statutory obligations pursuant to s. 6A, behind them by way of a settlement agreement. It seems that this issue will be addressed at the trial of this case. The novel nature of the legal issues to be determined at trial does not, in itself, make the point arguable but it leaves this Court to deal with the arguability of the point from first principles rather than by reference to existing jurisprudence.

42. Section 6A does not refer to an investigation or a re-examination of a matter previously investigated. It provides for the actions that must be taken where a designated person decides that there is *prima facie* evidence that a relevant wrongdoing may have occurred. It is arguable that a *prima facie* determination occurred in the within case when the defendant's Disclosures Group determined that one aspect of the disclosure, namely the reply given by the plaintiff to PAC1 merited further investigation (as set out at para. 1.2 of the Terms of Reference set out at paragraph 4 above). The subsequent actions required by s. 6A(1) after such a *prima facie* determination are set out at s. 6A(1)(d)(iii), s. 6A(1)(e), s. 6A(1)(f), s. 6A(1)(g). Subsections (e) and (f) are not applicable to the plaintiff as they relate to the provision of feedback to the reporting person. Subsection (g) provides for the provision of information and, similarly, it does not apply here. So, the only provision that could result in the statutory obligation on which the defendant relies seems to be s.6A(1)(d)(iii).

43. The diligent follow-up required of the person designated to follow up on "*reports*" include at s. 6A(1)(d) the provision of information to the reporting person, where they requested it and further feedback every three months "*until such time as the procedure relating to the report concerned is closed*". None of the affidavits refer to any provision of feedback to the reporting person (who is identified in the Terms of Reference), whether pursuant to the defendant's obligation to give it pursuant to s.6A(1)(e) or such further feedback as may have been requested by the reporting person pursuant to s. 6A(1)(f). I note the right to receive further feedback every three months arising from ss.(f) is expressly stated to be "*until such time as the procedure relating to the report concerned is closed*". That is sensible. It would be strange and probably unworkable to expect three monthly feedback to continue indefinitely.

44. Section 6A(1)(d)(iii) seems to be the only statutory obligation in s. 6A that could conceivably come within the steps that the defendant proposes to take here unless restrained from doing so, in pursuance of what it says are its statutory obligations pursuant to s. 6A which it says were not and could not have been compromised by the settlement agreement. The defendant seems to contend for a statutory open-ended obligation to take appropriate action to address the relevant wrongdoing.

45. The plaintiff has satisfied me that there is a fair/serious question that no such open-ended statutory obligation is imposed on the defendant by s. 6A and that any obligations on the parties pursuant to s.6A can form part of a compromise agreement reached between an employer and an employee.

46. In addition, I note that s.6A does not refer to an investigation after the designated person has decided that there is *prima facie* evidence that a relevant wrongdoing may have occurred (as provided for at s. 6A(1)(d)(iii)). The appropriate action that an employer is required to take is "*to address the relevant wrongdoing*". In this case, the plaintiff has not been found to have committed a relevant wrongdoing. The Jenkinson investigation was put in place to establish whether the plaintiff's replies to PAC1 constitute a relevant wrongdoing. In those circumstances, it is arguable that the impugned process, which purports to be part of the Jenkinson investigation, is not part of whatever obligation an employer may have to address a relevant wrongdoing, as no finding has been made of any such wrongdoing having occurred. Ms Jenkinson previously investigated whether a relevant wrongdoing had occurred. Had that process determined a relevant wrongdoing had occurred (which it did not), it seems that the defendant would have been required to take appropriate action to address it.

47. It is arguable that s. 6A(1)(d)(iii) does not provide a statutory basis to the impugned process which is a re-examination of an investigation that determined that no relevant wrongdoing had taken place, rather than constituting part of the appropriate action an employer is required to take to address a relevant wrongdoing.

48. If I am wrong on that and the impugned process is and continues to be a statutory process pursuant to s. 6A, then I am satisfied that the plaintiff has established a fair and/or serious question that appropriate action has already been taken by the defendant in the agreed imposition of less favourable terms and conditions of employment in the settlement agreement of 14 June 2024 and which were expressly referred to by Prof Laffan on behalf of the defendant at the further hearing before PAC in October 2024 (hereinafter referred to as "PAC3"). On that basis, I am satisfied that the plaintiff has established a fair and/or serious question that the defendant's statutory obligations pursuant to s.6A can be compromised by agreement and were so compromised in the settlement agreement of 14 June 2024, thereby precluding the defendant from taking any further steps pursuant to s 6A and/or relying on any such statutory obligations in justifying its decision to proceed with the impugned process.

49. For the avoidance of doubt, my findings relate only to matters which the plaintiff has satisfied me are arguable. They are not affected by s. 23 of the Protected Disclosures Act 2014, as amended, which merely provides that an agreement shall not prohibit or restrict the making of a protected disclosure and shall not exclude or limit the operation of any provision of the Act. I have reached my conclusions on s. 6A by reference to its provisions and there is no suggestion that anything done by either party has or sought to exclude or limit the operation of that section.

<u>Conclusion on Serious / Fair Question</u>

50. The plaintiff has established a serious and/or fair question that she will succeed at trial in establishing that the terms of the settlement agreement of 14 June 2024 preclude the impugned process from proceeding and that the provisions of the Protected Disclosures Act do not require the defendant to proceed with the impugned process regardless of the terms of the settlement agreement.

<u>Balance of convenience</u>

51. I now turn to the balance of convenience within which I consider the adequacy of damages. If the impugned process is permitted to proceed, the plaintiff will be subject to an investigation into whether she committed a serious wrongdoing in her statements to PAC1, despite having (on her case) settled this and other matters by agreeing to step down as President and accept less favourable terms and conditions of employment. The plaintiff contends that material obtained in the impugned process will be used as a pretext for further disciplinary action in breach of the settlement agreement. If this were to occur then the reputational damage to the plaintiff, and the denial to her of the rights she says she has pursuant to a settlement agreement she agreed to enter, could not be adequately compensated by an award of damages.

52. The defendant says the plaintiff's case wrongly assumes that unfairness will occur in the impugned process or that the defendant will unjustifiably rely on it to institute disciplinary proceedings in breach of the settlement agreement. They say this renders the application entirely premature, similar to the application which was refused by the Supreme Court in *Rowland v An Post*.

53. I have been satisfied by the plaintiff that the impugned process has gone irremediably wrong, given the arguability of her case that it breaches the settlement agreement and is not in fact required of the defendant by the Protected Disclosures Act. To allow the impugned process to continue has far more tangible and serious consequences for the plaintiff than the process that the defendant in *Rowland* was permitted to continue. I am satisfied that the plaintiff faces grave reputational damage if she is subjected to the impugned process, as that process could result in a negative outcome for her and could subsequently be found to be legally flawed. In those circumstances, I find this aspect of the case to be on all fours with that in which the plaintiff succeeded before the High Court in *Dunne v Board of Management of Little Angels Special School* [2023] IEHC 312.

54. I have also found *Barrett v Commissioner of An Garda Síochána* [2023] IECA 112 to be of assistance. There, a process was found by the Court of Appeal to have been tainted by *mal fides* and amounted to victimisation of the plaintiff for having made a protected disclosure. I make no such finding here, but I do consider the points which I have found to be arguable in terms of how the impugned process may be in breach of the plaintiff's contractual rights and not saved by the defendant's asserted statutory obligations, to be similarly indicative of a process that was arguably flawed from the outset. I find support for this approach in the decision of the Supreme Court in *McElvey v Iarnród Éireann* [2020] 1 IR 573 where Clarke CJ applied the *Rowland* principle to fashioning "*a result that runs the least risk of injustice*" and held that "*requiring a process to continue in circumstances where it is almost inevitable that the result will have to be set aside at the end creates a real risk of injustice*" (at para. 49). Charleton J drew a similar conclusion in stating, at para. 82, that the principles derived from the decisions in *Becker* and in *Rowland*:

> *"…stand as a proper interpretation of the circumstances where the courts should or should not intervene to divert a disciplinary procedure derived from contract from its ordinary course. Essentially, it is only where something has gone so wrong that contract rights to fair procedures are lost and cannot be corrected that an intervention by the court is justified."*

Whilst this is not primarily a case of fair procedures, the principle applies equally to where the plaintiff has established a process that would breach her contractual rights if permitted to continue – a point on which I have found the plaintiff has established a fair/serious question.

55. I therefore do not accept that this application is premature and therefore outside of where the court should intervene as per *Rowland* and previously by this Court in *Becker v Board of Management of St Dominic's Secondary School Cabra* [2006] IEHC 130.

56. In considering the balance of convenience for the defendant, I have had regard to the evidence of the defendant's Chancellor, Prof Laffan (set out at paragraph 20 above), about the damage she says will be caused by restricting the impugned process and delaying the finalisation of a protected disclosure investigation which she says strikes at the heart of the transparent communication and rebuilding of trust which the defendant has adopted. Having regard to how long the impugned process was going on before the plaintiff sought to challenge it, I am satisfied that any such damage caused by further delay can be adequately addressed by appropriate case management and ensuring an early date for trial.

57. Neither do I consider that any delay in bringing the within challenge to the impugned process, which the defendant seeks to attribute to the plaintiff, precludes the interests of justice resting in favour of granting the relief sought, having regard to the defendant's delays and to the plaintiff's efforts during that time to address her concerns by way of her own and later her solicitor's correspondence and the requests for undertakings which the defendant chose not to give.

<u>Conclusion</u>

58. I have been satisfied that the plaintiff has established a fair/serious question that she will secure the relief she now seeks at trial by reference to her claims of breach of contract arising from the terms of the settlement agreement of 14 June 2024 and that the defendant's actions in seeking to pursue the impugned process are not required by s. 6A. I have been satisfied that the balance of convenience, including the inadequacy of damages for the plaintiff if the impugned process were to continue, means that the interests of justice are best served by the grant of the interlocutory injunctive relief sought.

59. The case should proceed to trial without delay. I understand the parties have agreed a timeline in that regard.

Indicative view on costs

60. My indicative view on costs is that the basis on which I have granted the injunctive relief sought, may be revisited at trial and, in accordance with the decision of the Court of Appeal in *Yoplait Ireland Ltd v Nutricia Ireland Ltd* [2025] IECA 163, that the appropriate costs order would be to reserve the costs to the trial judge.

61. I will put the matter in before me at 10.00am on 29 July 2026 for the making of final orders, including costs and for such case management as may be required.

Counsel for the plaintiff: Marcus Dowling SC, Christopher McMahon BL

Counsel for the defendant: Brian Kennedy SC, Anna Shanley BL