APPROVED **[2026] IEHC 591**

2026 No. 2544 P

Between

JOHN HALLAHAN

Plaintiff

and

CORK CITY COUNCIL

Defendant

<u>JUDGMENT of Mr Justice Micheál O'Connell delivered on 25 August 2026</u>

Introduction

1. When the application to which this judgment pertains was first brought by Notice of Motion filed on 20 May 2026, the principal relief sought was, in substance, to restrain pending the trial of this action the transfer of the Plaintiff from his position as Head of Finance in the Defendant, Cork City Council, to a newly created position of Head of Cost Transformation.

2. Since that time, the Defendant has confirmed that it no longer intends to transfer the Plaintiff as initially proposed. Instead, it decided to appoint (and has since appointed) to the role of Head of Cost Transformation the person previously selected to take over the Plaintiff's role as Head of Finance. However, it also proposes to reorganise its Finance Department and to create a new Department under the Head of Cost Transformation to which certain of the Plaintiff's functions as Head of Finance will be transferred.

3. In that context, the Plaintiff pursues as a primary relief one of the additional reliefs sought in his Notice of Motion, that is to say, an order restraining the Defendant from assigning the Plaintiff's duties to any other person pending the trial of this action.

4. For the reasons set out below, I am satisfied that the Plaintiff is entitled to the relief sought.

Principal facts

5. The Plaintiff has been employed by the Defendant since 2010, having theretofore worked in the private sector. Having initially worked as a Management Accountant (Grade 8 on the public sector pay-scale), he was promoted to acting Head of Finance in 2015 and to Head of Finance in 2016. He has worked in that role since then. The Finance Department is termed a "directorate" within the Defendant, and its head is referred to as a "director", although the court was advised that that terminology does not have a statutory basis.

6. The Finance Department consists of 68 employees, including full- and part-time positions, working under the Plaintiff on public sector pay-scale grades 3-8. The functions of the Plaintiff and the Finance Department include the following:

(a) Responsibility for the annual budget process of the Defendant (the Defendant emphasised and the Plaintiff agreed that the Chief Executive Officer has ultimate responsibility for the budget itself).

(b) The preparation, implementation and ongoing review of the Defendant's finance plan.

(c) Engaging with stakeholders, including elected members, in the prudent management of the Defendant's financial resources.

(d) Sourcing of finance and formulation of financial arrangements in the context of partnerships, new funding ventures and public-private partnerships.

(e) The appraisal of capital projects.

(f) The delivery of value for money in pursuit of the Defendant's corporate objectives.

(g) Ensuring adherence to accepted accounting standards and codes of practice.

(h) A leadership/advisory role in ensuring the financial probity of the Defendant's organisation.

(i) Duties with regard to the training and education of finance staff, creating and supporting a culture of taking responsibility for management of devolved resources, and other duties as assigned from time to time.

7. The evidence indicated that the Finance Directorate accounts for approximately 16.6% of the overall budget of the Defendant, including pension payments, boundary compensation (on which I will say more below), insurances, rates bad debts, other bad debt write-offs, loan repayments and finance staff pay.

8. The Plaintiff's contract of employment was in evidence, and much of the debate focussed on the following provisions:

> "*3 Position*
>
> *You will be employed as Head of Finance in accordance with the qualifications and particulars of the post*
>
> *Cork City Council reserves the right to alter the Department/Directorate to which you are assigned*"

9. As Head of Finance, the Plaintiff is a member of the Defendant's 12-person senior management team. The senior management team reports to the Chief Executive Officer of the Defendant.

10. The Chief Executive Officer of the Defendant is Valerie O'Sullivan ("*the CEO*"), who was appointed in October 2024, having immediately theretofore been employed by Cork County Council. The CEO was Chief Executive of Cork County Council for a 10-month period from September 2023 to June 2024.

11. Under the Plaintiff, the Finance Department had reported a small surplus on its budget every year until 2025. In 2025, a deficit of just over €2.75 million was recorded for that year. The Plaintiff noted that this was less than 1% of the annual budget and contextualised the deficit by reference to two developments in particular. The first was an annual payment required to be made by the Defendant to Cork County Council arising from a boundary adjustment of their respective functional areas in 2020, which had increased more than anticipated due to the fact that it was index-linked at a time of high inflation. The second was the fiscal challenge presented by housing maintenance, one solution to which the Plaintiff saw in the implementation of recommendations made in an expert report obtained in 2024, which has not yet been implemented pending "*a radical and strategic overhaul of housing management*" (to quote the CEO of the Defendant) although other steps were being taken to address the issue. The Defendant emphasised that the position had been deteriorating since 2020 (when there was an accumulated surplus of €11.3million, although the Plaintiff noted that the surplus was inflated that year by a reduction in costs due to the Covid pandemic), through to 2023 (when that surplus had fallen to €6.7million) to 2025 (when, following the budget deficit of that year, the Defendant carried a deficit of €1.87million), and the CEO testified that if the trend continued the Defendant would require intervention from Central Government.

12. On 11 May 2026, the Plaintiff was asked to attend a meeting with the CEO and the Assistant Chief Executive Officer. The CEO advised that she was setting up a new position to be called the "Head of Cost Transformation", and that she wanted the Plaintiff to assume that role. She provided the Plaintiff with a short memo addressed to the members of the senior management team advising of the establishment of the position.

13. The memo began by noting the "*constant focus on our financial position*" and the "*inclusion of cost savings measures as a key priority for* [the senior management team]", and stated that "*the current situation cannot continue*." Considerable attention was given in the memo to the urgency of creating the role and to the precarious financial position in which the Defendant found itself. The memo noted that the position of Head of Cost Transformation would be established on 18 May 2026 "*for an initial period of one year, subject to review.*" The Head of Cost Transformation would report directly to the CEO and would work across all Departments to identify cost saving opportunities and to implement them "*at pace*". Such measures "*would come before Senior Management Team for information.*" The memo also stated that the Head of Cost Transformation would present a draft programme to the senior management team by mid-June 2026 for adoption, after which the focus would immediately move to implementation. The penultimate paragraph of the memo provided:

> "*This change will require a reset within the Finance function. Further details of this will issue as soon as I have met with Finance. I continue to review our structures to ensure alignment with our strategic goals. At this juncture, cost transformation is paramount and demands dedicated and focussed leadership.*"

14. The Plaintiff averred that, at the meeting on 11 May 2026, he expressed reluctance to be appointed to the role in question. He suggested two other people who might be better suited to the role (the CEO averred that the suggestion of two alternative candidates was made before his proposed appointment was notified to him, but little turns on that difference here). He averred that the CEO advised that neither of these was suitable for the role (although this was denied by the CEO in her first replying affidavit). The Plaintiff averred that he said to the CEO that he would have to think about it, but again the CEO disputed this, saying that her decision was already made and that she would not have agreed to his considering the matter.

15. The senior management team was advised that the Plaintiff would assume the new role of Head of Cost Transformation function at its meeting of 12 May 2026. The Plaintiff did not comment on the matter at this meeting.

16. Later on 12 May 2026, the CEO emailed the members of the senior management team advising that Mr Jeremy Canty would be appointed as Head of Finance to replace the Plaintiff for the ensuing one-year period. Mr Canty was a subordinate of the Plaintiff in the Finance Department, as a grade 8 officer with an assigned role of analysing costs. He had been an employee of Cork City Council since September 2025, having previously worked for Cork County Council as its acting Finance Director. He was one of the two persons suggested by the Plaintiff for the role of Head of Cost Transformation at the meeting with the CEO the previous day.

17. The Plaintiff emailed the CEO shortly after and in response to her email. He noted that the change to his position was first mentioned the day before. He referred to it as "*a very significant change to* [his] *contracted role*" and expressed surprise and disappointment before stating that, while he was considering the matter, he remained in his role as Head of Finance.

18. The CEO responded promptly, stating that she had checked the Plaintiff's contract (a copy of which she attached to her email) before making her decision and that she was at a loss to understand his surprise, given the two meetings of 11 and 12 May 2026. She reiterated the importance of the new role and said that she was looking forward to working with the Plaintiff in it.

19. The Plaintiff then retained solicitors who wrote to the CEO late on the evening of 13 May 2026 setting out their instructions as to the events of 11 and 12 May 2026. The letter stated that the Plaintiff did not agree to take up the position of Head of Cost Transformation, noting that "*there is no identifiable structure in place,* [and] *no indication how the service is going to be resourced or funded*." The letter referred to the "*circumstances of this sudden purported transfer*" which, it was said, "[gave] *rise to a general suspicion of wrongdoing*" and stated that the Plaintiff wished to invoke clause 5 of the Defendant's Grievance and Disciplinary Procedure ("*the Grievance Procedure*"). As the CEO was the person to whom a grievance was to be reported under the Grievance Procedure, and as her decision and actions were to be the subject of assessment, and as there was no person above her in the management structure, the letter called on the Defendant to appoint an independent person to take the necessary steps to resolve the complaint. The letter requested the preservation of the status quo – as prescribed by clause 6.1 of the Grievance Procedure – and a reply by return.

20. On 14 May 2026, the Plaintiff received a telephone call from another Director of the Defendant who had been tasked with finding him a new office.

21. On 15 May 2026, no reply having been received to their letter of 13 May 2026, the Plaintiff's solicitors wrote again to the CEO seeking confirmation that the *status quo* would be maintained and that, unless the six undertakings sought therein were not given by 5pm that day, an application would be made to the High Court for injunctive relief.

22. That afternoon, solicitors acting on behalf of the Defendant replied to the Plaintiff's solicitors. The letter acknowledged the Plaintiff's entitlement to invoke the grievance procedure but stated that the letter of 13 May 2026 was not such an invocation. A copy of "*the applicable procedure*" was attached. The letter went on to draw attention to the terms of the Plaintiff's contract wherein the Defendant reserved the right to alter the

Department/Directorate to which he was assigned. The letter included an invitation to meet with the CEO and the Assistant CEO at 2:30pm on 18 May 2026 to discuss "*any concerns about his appointment as Head of Cost Transformation, the structures, resources and funding required and further to assist all parties in achieving their common objective of addressing the top internal priority of the Council*." The letter concluded as follows:

> "*However, our client's position is clear. The Chief Executive has exercised, in accordance with the powers of that office and further, in exercise of the aforementioned contractual right reserved, to appoint your client as Head of Cost Transformation, effective 9am Monday 18 May 2026.*"

23. The Plaintiff's solicitors replied to the Defendant's solicitors the same day asking the latter to note that they were invoking the Grievance Procedure on behalf of the Plaintiff and seeking an explanation for why the Defendant was refusing to implement it.

24. On 18 May 2026, the Defendant's solicitors responded asserting their client's right to appoint the Plaintiff as Head of Cost Transformation, which they stated was "*effective 9am today*". They stated that the Grievance Procedure "*does not provide for external legal representatives to "invoke" said workplace procedure*" and that, as of that time, no grievance had been received. In relation to the six undertakings sought by the Plaintiff's solicitors, each was declined in turn, save for the last (which had requested engagement with the Plaintiff's solicitors) which was met with a query as to what "*engagement*" meant.

25. The same day, the Plaintiff's solicitors replied advising that the Plaintiff would not be attending the meeting scheduled for that day as it contemplated "*no more than a discussion of the new purported role of Head of Cost Transformation and the funding and structures for that role.*" The issue of invocation of the Grievance Procedure was addressed further in that letter, and in a further response that day from the Defendant's solicitors.

26. On 18 May 2026, the CEO issued Delegation Order 2024/26, which delegated to the Plaintiff the executive powers, functions and duties of the "*Head of Cost Transformation / Head of Fiscal Strategy*." This identified in general terms the functions and powers appointed to him, as well as some that were excluded from the delegation. By paragraph 5.a., the delegation excluded powers, functions and duties in regard to "*the final preparation of the Annual Budget.*"

27. These proceedings issued on 19 May 2026, and on the same day, an application was made *ex parte* for interim reliefs. By order of the High Court (Kennedy J) made the same day, ordered that the Defendant be restrained until 21 May 2026 (the return date appointed by the court for a motion for which short service was granted) from:

> "*…taking any further steps to treat the Plaintiff as otherwise than employed as Head of Finance by the Defendant with all attendant rights powers and privileges*
>
> *…taking any further steps to treat the Plaintiff as otherwise than as Head of Finance by the Defendant or from assigning the Plaintiff's duties to any other person*
>
> *…treating the Plaintiff as other than continuing to be employed by the Defendant as Head of Finance*
>
> *...publishing or communicating to any party that the Plaintiff is no longer Head of Finance of the Defendant Company* [sic]"

28. The Defendant was also required to inform the senior management team that the Plaintiff remained as Head of Finance.

29. The injunctive relief granted on 19 May 2026 was continued by further order of the High Court (Jordan J) made by consent on 21 May 2026.

30. In her replying affidavit sworn on 5 June 2026, the CEO revealed that a decision had been taken to rescind the appointment of the Plaintiff as Head of Cost Transformation. At Paragraph 11 of that Affidavit, she said:

> "*….the present proceedings have at least had the positive outcome this conduct in relation to this matter that he was 'not the man for the job'. The Council will be dependent for the stability of its future finances on the job of work undertaken by the Head of Cost Transformation. It clearly would have made a desperate situation even worse had the Plaintiff accepted his transfer and taken up the role: he lacked the foresight and drive to make a success of the position and we would have had to appoint someone else when these shortcomings became apparent and circumstances began to unravel.*"

31. In the same Affidavit, the CEO averred that she had decided to appoint the aforementioned Mr Canty to the role of Head of Cost Transformation, and that a draft programme to identify structures, resources and funding for the role would be presented by him to the senior management team the following week.

32. The CEO emphasised that she had effected a major restructuring process within the Defendant's organisation beginning on the first working day of her appointment and this included the creation of two new Directorates (the Director of City Centre Development and Operations and the Director of Climate Action and Emergency Management) as well as the reorganisation of other Directorates and functions within them. This involved the reassignment of seven senior managers or directors and the implementation of major changes. The only person who did not accept a reassignment was the Plaintiff, who, according to the CEO, "[prioritised] *his own comfort and convenience over and above the good of the organisation*." Responding to the CEO's averments, the Plaintiff noted that the Directorate of City Centre Development and Operations was created in October 2024, filled in February 2025 and its plan provided in December 2025, contrasted with a four-week proposal for the Head of Cost Transformation.

33. At all events, on 12 June 2026, the Defendant's solicitors wrote to the Plaintiff's solicitors advising that Mr Canty had been appointed to the "*Directorate of Interim Head of Cost Transformation*" pursuant to Delegation Order 2417/26 and that various powers, functions and duties had been delegated to him pursuant to it. In addition, Delegation Order 2418/26 had been made, which delegated various executive powers, functions and duties to the Plaintiff. Copies of each of these delegation orders were included with the Defendant's solicitors' letter.

34. Delegation Order 2417/26, which delegated to Mr Canty the functions associated with the role of Head of Cost Transformation, was largely similar in content to Delegation Order 2024/26. However, while the function of the final preparation of the annual budget remained an excluded function, there was included a new function identified as follows:

> "*<u>Responsibility for, preparation, management, oversight and operation of</u> the annual budget<u> and Capital Programme</u> of Cork City Council and preparing recommendations for the Chief Executive detailing the amendments/improvements to such processes.*" (emphasis in original)

35. An additional newly added function was:

> "*acting as primary liaison with the <u>Finance and Estimates Committee and as required with the Audit Committee and the Local Government Auditor in the performance of the functions set out in this delegation.</u>*" (emphasis in original)

36. The covering letter of the Defendant's solicitors noted the terms of the order of 19 May 2026 and acknowledged that the words in emphasis in the functions identified above might operate to breach the terms of the Court Order inasmuch as it restrained the assignment of the Plaintiff's duties to any other person. The letter emphasised the desire of the Defendant to implement these changes "*at pace*" and stated that "*functions crucial to the cost transformation agenda may not be performed in the prevailing circumstances*" and that "*in a very real way, and at an operational level, this stymies both the process of change, and the pace of change needed to address the existential crisis faced by our client, namely the need to address the fiscal deficit.*" The letter went on to request the Plaintiff's consent to the delegation of the emphasised functions to Mr Canty and advised that the Defendant would "*have no objection to* [the Plaintiff's] *continued attendance at Finance and Estimates Committee Meetings.*"

37. The letter advised that if the Plaintiff's consent was not forthcoming, the Defendant would "*proceed to engage both Directorates at each and every meeting, at which the Chief Executive (and/or Assistant Chief Executive) will be present*" and went on to state that "[the] *Chief Executive (and/or Assistant Chief Executive) will ultimately, and where required, act as arbiter in respect of two Directorate opinion(s) and/or recommendations.*" It was acknowledged that this "*doubling-up*" was "*both highly unusual and undesirable, and is neither expedient nor productive, and will only result in sub-optimal and costly outcomes which the Council can ill-afford in circumstances where the Council is in the midst of a n unprecedented deficit crisis.*" The letter concluded that, in the event that consent to the terms being refused, the Defendant's intention was to seek a variation of the Court Order to enable that delegation order to take effect in full.

38. On the same date as the above mentioned delegation orders, Delegation Order 2416/26 rescinded Delegation Order 2024/26 (by which the Plaintiff had been appointed as Head of Cost Transformation).

39. The Plaintiff averred that the function of the "*preparation, management, oversight and operation of the annual budget and Capital Programme of Cork City Council*" occupied approximately 30% of his time, while the ongoing monitoring of the financial performance of the Defendant Council would account for approximately 10% of his time. Meetings with the Finance and Estimates Committee took place approximately 8-10 times per annum while meetings with the Audit Committee took place six times per annum. Other than to state that these are the Plaintiff's "*estimates*" the Defendant has not contested these averments. Rather, the CEO criticised the Plaintiff for having "*given no consideration of the extent to which he could usefully deploy the additional time which* [the reassignment of these functions to the

Head of Cost Transformation] *would create in the Finance Department to concentrate more effectively and comprehensively on the tasks that currently take up 60% of his time.*"

40. In June 2026, in accordance with a request made by the CEO to the senior management team, the Plaintiff oversaw and produced a mid-year budget review and a forecast, which, according to the Plaintiff, showed that the finances of the Defendant were not in a perilous state as contended by the CEO in her affidavits. The CEO averred that a mid-year budget was not something that had been done before and she questioned certain assumptions within the report.

The Plaintiff's case

41. Ultimately the issue requiring determination in this application became whether the assignment of powers, functions and duties to Mr Canty as Head of Cost Transformation in accordance with Delegation Order 2417/26 and the consequent delimitation of the powers, functions and duties held by the Plaintiff as Head of Finance should be permitted or not pending trial. The specific focus was on the roles identified and emphasised in the letter of the Defendant's solicitors dated 12 June 2026.

42. A supplemental question arising was whether the making of Delegation Order 2417/26 constituted a breach of the existing High Court Order, notwithstanding the "doubling-up" proposed in the letter of the Defendant's solicitors.

43. Although the substantive case has not yet been pleaded, the Plaintiff's case as presented is that Defendant first tried to force him from his position as Head of Finance without notice or consultation of any kind, in favour of Mr Canty. When he resisted that, the Defendant – as a response to his resistance – hollowed out his position by the reassignment of certain key functions of his, again to Mr Canty, in a manner that is humiliating and degrading (as well as being in breach of an Order of the High Court). He contends that this is a breach of his contract of employment, on the ground that the contractual power to reassign him to other Departments or Directorates than that to which he was assigned is curtailed by the parameters of his employment as defined in his contract of employment and associated documents, and on the separate ground that the decisions both to seek to reassign him, and thereafter to reassign his tasks, were made in a manner that failed to comply with what is referred to as the *Braganza* principle, which operates as a control on the exercise of contractual discretions. Separately, the Plaintiff contends that there has been a breach of the Grievance Procedure which, at Clause 6.1, provides:

> "*During the course of the grievance procedure, the status quo will be maintained and work will continue without interruption*"

Authorities

44. Several authorities were opened at the hearing of the application, although none concerned precisely the circumstances in which the matter came before the Court.

45. The decision in *Earley v HSE* [2017] IECA 158 concerned a reassignment of an employee from a clinical to an administrative role within the HSE in reliance upon clauses that allowed for revisions to her work location, duties, and her terms and conditions of employment. Reversing the decision of the High Court, the Court of Appeal held that those clauses were required to be read in the light of the employee's job description and on the facts of the case did not allow for a change as significant as that proposed, even if the change did not entail any loss of remuneration, status or prestige. In a subsequent judgment dealing with the reliefs to be granted ([2017] IECA 207), the Court of Appeal granted an injunction requiring the restoration of the employee to her previous position. In submissions, the Defendant emphasised that the proposals under scrutiny neither resulted in a fundamental change to the Plaintiff's role comparable to what employee faced in *Earley,* nor left him without meaningful duties to perform.

46. In the context of interpreting the Plaintiff's contract of employment, my attention was also drawn to the decision of the Court of Appeal of England and Wales in *Wandsworth London v D'Silva* [1998] IRLR 197 and, in particular, the following passage from the judgment of Lord Woolf MR (at paragraph 31):

> "*The general position is that contracts of employment can only be varied by agreement. However, in the employment field an employer or for that matter an employee can reserve the ability to change a particular aspect of the contract unilaterally by notifying the other party as part of the contract that this is the situation. However, clear language is required to reserve to one party an unusual power of this sort. In addition, the court is unlikely to favour an interpretation which does more than enable a party to vary contractual provisions with which that party is required to comply. If, therefore, the provisions of the code which the council were seeking to amend in this case were of a contractual nature, then they could well be capable of unilateral variation as the counsel contends. In relation to the provisions as to appeals the position would be likely to be different. To apply a power of unilateral variation to the rights which an employee is given under this part of the code could produce an unreasonable result and the court in construing a contract of employment will seek to avoid such a result.*"

47. The *Braganza* principle is derived from the decision of the UK Supreme Court in *Braganza v BP Shipping Limited* [2015] 1 WLR 1661, in which a contract of employment of an officer in a shipping company, which provided for compensation in the event of *inter alia* the death of the employee, permitted a refusal to pay such compensation "*if, in the opinion of the Company or its insurers, the death … resulted from among other things, the Officer's wilful act, default or misconduct whether at sea or ashore…*". The employee in question, the husband of the plaintiff, disappeared from his ship in the mid-North Atlantic and the defendant employer declined to pay compensation on the basis of its opinion that he had committed suicide. While the members of the court differed on the application of the test to the facts of the case, they were *ad idem* as to the nature if the constraint that was to be implied into contracts in which a discretion was conferred on one party in a manner that affected both parties. Baroness Hale noted that clauses conferring discretions of this type were common and that the courts were not to rewrite such clauses. "*Nevertheless*", she observed (at paragraph 18):

"*the party who is charged with making decisions which affect the rights of both parties to the contract has a clear conflict of interest. That conflict is heightened where there is a significant imbalance of power between the contracting parties as there often will be in an employment contract. The courts have therefore sought to ensure that such contractual powers are not abused. They have done so by implying a term as to the manner in which such powers may be exercised, a term which may vary according to the terms of the contract and the context in which the decision-making power is given.*"

48. The nature of the term the Court held to be implied is clearly expressed in a passage quoted with approval by both Baroness Hale (for the majority) and Lord Neuberger (dissenting) from the judgment of Rix LJ in *Socimer International Bank Ltd v Standard Bank London Ltd* [2008] Bus LR 1304 at paragraph 66, in which he emphasised the distinction between irrationality (in the sense that it is used in administrative law) and unreasonableness in the context of a contractual allocation of discretion:

"*It is plain from these authorities that a decision-maker's discretion will be limited, as a matter of necessary implication, by concepts of honesty, good faith, and genuineness, and the need for the absence of arbitrariness, capriciousness, perversity and irrationality. The concern is that the discretion should not be abused. Reasonableness and unreasonableness are also concepts deployed in this context, but only in a sense analogous to Wednesbury unreasonableness, not in the sense in which that expression is used when speaking of the duty to take reasonable care, or when otherwise deploying entirely objective criteria: as for instance when there might be an implication of a term requiring the fixing of a reasonable price, or a reasonable time. In the latter class of case, the concept of reasonableness is intended to be entirely mutual and thus guided by objective criteria … Laws LJ in the course of argument put the matter accurately, if I may respectfully agree, when he said that pursuant to the Wednesbury rationality test, the decision remains that of the decision-maker, whereas on entirely objective criteria of reasonableness the decision-maker becomes the court itself.*"

49. In *O'Sullivan v HSE* [2023] IESC 11, the Supreme Court confirmed that the *Braganza* principle, as articulated in the passage quoted above from *Socimer*, applies in Irish law, and it has been accepted and applied in several decisions of the High Court and Court of Appeal.

50. Although Lord Neuberger considered that the death of the employee in the case before him extinguished such a duty, the court broadly agreed that – during the employment relationship at least – an implied duty of trust and confidence between employer and employee subsisted, and in that regard Lord Hodge (at paragraph 54) quoted the following passage from the judgment of Mummery LJ in *Keen v Commerzbank AG* [2007] ICR 623 (at paragraph 43):

> "*Employment is a personal relationship. Its dynamics differ significantly from those of business deals and of state treatment of its citizens. In general there is an implied mutual duty of trust and confidence between employer and employee. Thus it is the duty on the part of an employer to preserve the trust and confidence which an employee should have in him. This affects, or should affect, the way in which an employer normally treats his employee.*"

51. In *Start Mortgages v Simpson* [2026] IECA 67, Butler J noted (at paragraph 39) that much of the analysis in *Braganza* was predicated on the employment contract context.

A fair question to be tried or a strong case?

52. The parties differed as to whether the standard to be met on the first limb of the *Campus Oil/Merck Sharpe and Dohme* test was the ordinary standard of showing a "*fair question*" to be tried, or the higher test identified in *Maha Lingham v HSE* [2005] IESC 89 of a "*strong case*". In my view, this is an application in which the ordinary standard requires to be met: the *status quo ante* Delegation Order 2024/26 of 18 May 2026 is what the Plaintiff seeks to preserve, and an injunction of the type sought by the Plaintiff would not require the Defendant to carry out any positive steps (save insofar as necessary to preserve the *status quo ante* in light of its own actions since 18 May 2026).

Whether a fair question has been raised

53. In my view, the Plaintiff has shown a fair question to be tried as to whether the Defendant has failed to observe the term implied in the Plaintiff's contract of employment by reference to the *Braganza* principle and in its refusal to recognise the Plaintiff as having invoked the Grievance Procedure. I am not prepared to conclude that a fair question to be tried is shown that the Plaintiff's duties could never be reassigned in the event of the creation of a new Department or Directorate, provided his contractual rights were adhered to in the process.

54. I accept that the functions associated with the positions of Head of Finance and Head of Cost Transformation concern related areas of responsibility and that the facts are materially distinguishable from those in *Earley*. Nevertheless, removing the Plaintiff from his position as head of a large, long-established, well-resourced and influential department and assigning him to a newly created position of uncertain scope would have represented a change of very considerable significance for an employee in the position of the Plaintiff for the previous for ten years.

55. The CEO had held her current appointment since October 2024 and had evidently been concerned about the Defendant's financial position during that period. She referred to a downward financial trend since 2020 and, in particular, to the deficit for 2025, which was said to have been confirmed approximately six months before the meeting of 11 May 2026. The Defendant described the establishment of the position of Head of Cost Transformation as both critical to addressing its financial difficulties and an organisational priority. As at 11 May 2026, however, the plan extended no further than the matters outlined in the CEO's memo. It was readily foreseeable that presenting the Plaintiff with such a significant change to his employment, without prior consultation, would cause him considerable surprise. Indeed, the fact that the CEO had reviewed his contract in advance suggests that she anticipated that the proposal might raise contractual concerns.

56. Reviewing the Plaintiff's contract evidently gave the CEO considerable confidence that she could do what she did. However, the *Braganza* principle operates through an implied term and does not appear on the face of the Plaintiff's contract. Although the importance of the new role and the urgency attendant upon its establishment are repeatedly affirmed by the Defendant and the CEO, it is clear from the tone and content of both the correspondence issued and the affidavits filed on behalf of the Defendant that the core of its position was, as the CEO put it in her first affidavit, that "*there is no option to refuse and/or reject a reassignment*" based on the Plaintiff's contract of employment and "*the custom and practice in its current operation*". The difficulty with this view is that it fails to recognise the constraint presented by the *Braganza* principle.

57. The *Braganza* principle derives in part from the implied mutual duty of trust and confidence between employer and employee. That raises a question as to why the Defendant's first step was to present the Plaintiff with a decision to remove him from his existing position and assign him to a new role of uncertain scope, structure and resources, rather than to consult him, as Head of Finance, about what the proposed role should entail. On the evidence, there appears to have been sufficient time for such consultation. No evidence was adduced as to who, if anyone, had been consulted before 11 May 2026 or as to the process that led to the decision to assign the Plaintiff to the new position.

58. In her first replying affidavit, the CEO averred that the manner in which she appointed the Plaintiff was "*in line with normal practice since my appointment as Chief Executive as pertains to all other Directorates of the Council and in particular in a time of crisis*". That may be so. However, the circumstances surrounding each of the other reassignments were not in evidence, and the fact that none was challenged does not establish that each complied with the relevant contract of employment. It is unclear whether the Defendant relied on this "*normal practice*" as a custom or practice informing the construction of the Plaintiff's contract. If so, that argument would require at least further explanation. A managerial practice introduced years after the contract was made cannot, merely by reason of its subsequent existence, establish the objective meaning of the contract at the time of formation. In this case, the asserted practice post-dated the Plaintiff's contract by approximately at least 8 years.

59. Of course, the decision now requiring examination is the later decision to assign certain of the Plaintiff's functions to Mr Canty as Head of Cost Transformation. Nevertheless, the original decision to reassign the Plaintiff nevertheless forms an essential part of the context in which the later decision must be assessed under the *Braganza* principle.

60. In a little over three weeks, the Plaintiff went from being selected by the CEO for the new position to being described as lacking "*the foresight and drive to make a success of the position*", with the prospect of "*circumstances … unravel*[ling]" were he to have accepted the role. The Plaintiff's actions during that period which prompted this ostensible *volte face* consisted of declining to accept the proposed reassignment, challenging the Defendant's contractual entitlement to impose it, seeking to invoke the Grievance Procedure, and commencing these proceedings. The ensuing personal criticism in the CEO's affidavit and a proposal to assign to Mr Canty functions that the Plaintiff estimated occupied approximately 40% of his working time, may well have been a *volte face*; alternatively, the Plaintiff may be correct in maintaining, as he does, that the initial proposal was a demotion in favour of promoting Mr Canty and that the subsequent reassignment of duties was another way of achieving the same demotion and promotion. That will be a matter for trial.

61. The Defendant emphasised that the position of Head of Cost Transformation was still being designed during May and June 2026, to explain why these transfers of functions were not articulated earlier. However, that raises a question as to why responsibility for preparation of the annual budget was not included when the position was created or when the Defendant purported to assign the Plaintiff to the position. It also raises a question as to whether that function became part of the position only after the decision to appoint Mr Canty.

62. The relevant contractual discretion was required to be exercised honestly, in good faith and genuinely, and without arbitrariness, capriciousness, perversity or irrationality. The Defendant may establish at trial that it met those requirements. At this stage, however, I am satisfied that the Plaintiff has raised a fair question to be tried as to whether it did so.

63. I am also satisfied that the Plaintiff has raised a fair question to be tried as to whether the Defendant's approach to invocation of the Grievance Procedure was unduly formalistic and incorrect. It is undisputed that the procedure applied to the Plaintiff, and nothing in its terms appears to prevent an employee from communicating a grievance through a solicitor. The initial stages of the procedure, particularly its informal stages, may in practice have required direct engagement between the relevant individuals without legal representatives. That does not necessarily mean, however, that a solicitor's letter expressly stating that the procedure was being invoked could be treated as a nullity. Such a letter was at least capable of constituting a communication by the Plaintiff and, on his case, of triggering the *status quo* protection in clause 6.1 of the Grievance Procedure.

64. That consideration has particular force here. The ordinary process appears to have required the Plaintiff to submit his grievance to the CEO, although her own decision and conduct formed the subject matter of that grievance. Some adjustment to the procedure, such as the nomination of an independent recipient, may therefore have been necessary to preserve the effectiveness of the process to which the Plaintiff claimed a contractual entitlement.

Balance of convenience

65. It seems clear to me that the two-step process leading to the present impasse—first, the purported reassignment of the Plaintiff and, secondly, the proposed transfer to Mr Canty of functions that had not previously been identified for reassignment—has had, and if implemented would continue to have, a humiliating and degrading effect on the Plaintiff. That effect is intensified by the CEO's affidavit evidence, which made her negative assessment of him unmistakably clear. The Defendant might, following a trial or another resolution of the proceedings, be entitled to implement changes of this kind. That could occur either following a successful defence of the proceedings or through a fresh process conducted in conformity with the Defendant's contractual obligations. If the proposed changes were implemented now but the Plaintiff later succeeded at trial, reversing them would create considerable practical and organisational difficulties. There would also be a material risk that the Plaintiff would attract criticism within the organisation notwithstanding his success in the proceedings. The resulting workplace and reputational harm would be difficult to quantify, and damages would not provide an adequate remedy.

66. The Defendant's asserted need to restructure in response to the budget deficit is certainly a weighty consideration in assessing the balance of convenience. The court has no role in determining the merits of the Defendant's organisational policy or in designing the position of Head of Cost Transformation. It must, however, assess the evidence concerning the urgency and necessity relied upon in opposition to the injunction.

67. Any order preserving an employee's position will have consequential organisational effects, but an employer's stated operational priorities cannot, without more, override all countervailing considerations.

68. There is a dispute as to whether the Defendant's finances are as precarious as the CEO described in her affidavits. That dispute cannot be resolved on this application. The evidence nevertheless gives rise to several considerations that reduce the weight to be attached, at this stage, to the asserted urgency of transferring the relevant functions. First, although the Defendant described the matter as one of primary importance and urgency, the new position was proposed approximately six months after the deficit was said to have been identified.

Secondly, during that period, the CEO did not raise the proposal with, or consult, the Plaintiff in his capacity as Head of Finance. The evidence does not identify who else, if anyone, was consulted. Thirdly, the Defendant relied on a financial trend said to have existed since 2020, raising a question as to when the creation of the new position was first contemplated or discussed. Fourthly, the Defendant expressly disavowed any allegation of poor performance by the Plaintiff. His continued involvement in preparing the annual budget, in consultation with other relevant departments and directorates, has not been shown to be inconsistent with the effective operation of the new position. Fifthly, Delegation Order 2024/26 expressly excluded "the final preparation of the Annual Budget" from the functions delegated to the Head of Cost Transformation when the Plaintiff was the proposed appointee. No adequate explanation has been given as to why responsibility for preparation of the budget assumed such importance when the position was assigned to Mr Canty in June 2026.

69. The Defendant plainly faces a significant challenge in managing its finances. On the evidence presently available, however, it has not demonstrated that the immediate transfer of these particular functions to the Head of Cost Transformation is of such necessity or urgency that it outweighs the likely harm to the Plaintiff pending trial. I am therefore satisfied that the balance of convenience favours preserving the existing position until the proceedings are determined.

Conclusion

70. For the reasons set out above, I will make an order substantially in the terms of the interim order made on 19 May 2026 and continued by consent on 21 May 2026, omitting those elements that are now redundant. The order will restrain the Defendant, pending trial or further order of the Court, from assigning the Plaintiff's duties to another person. It will not prevent the reassignment of any function with the Plaintiff's prior agreement. For the avoidance of doubt, the previously proposed duplication of functions between the positions of Head of Finance and Head of Cost Transformation would, if implemented, breach the order (whether or not the CEO or Assistant Chief Executive Officer was interposed to arbitrate between competing opinions or recommendations). Such an arrangement would be likely to compound, rather than mitigate, the professional harm to the Plaintiff because it would create overlapping authority in relation to functions attached to his position. Counsel for the Defendant fairly accepted that the proposed duplication arrangement was unworkable. That concession was consistent with the Defendant's own correspondence, which described the arrangement as unusual, undesirable, inexpedient and unproductive. In those circumstances, the proposal does not provide a workable alternative to preserving the existing allocation of functions pending trial.

71. I recognise that the order will create organisational difficulties for the Defendant. Those difficulties must be weighed against the harm likely to be suffered by the Plaintiff in circumstances where he has raised a fair question to be tried concerning compliance with his contractual rights.

72. It is not for the Court to design the position of Head of Cost Transformation, to determine the functions or resources that should be allocated to it, or to identify the departments or directorates from which they should be drawn. On the evidence presently before the Court, however, the Defendant has not demonstrated that the immediate transfer of the particular functions at issue is of such necessity or urgency as to outweigh the harm likely to be caused to the Plaintiff pending trial.

73. The proceedings should now progress expeditiously so that the organisational effect of the interlocutory restriction is limited. The case is listed before me during the vacation sittings, and I will hear the parties as to the precise form of the order, the directions required to secure an early trial and the costs of the application. The Plaintiff should deliver a Statement of Claim before the matter is next listed for those purposes.