THE HIGH COURT

[2023] IEHC 87

2022 No. 6262P

BETWEEN

AMANDA HENNIGAN

PLAINTIFF

AND

AN COIMISIÚN LE RINCÍ GAELACHA

DEFENDANT

JUDGMENT of Ms. Justice Eileen Roberts delivered on 24 February 2023

Introduction and background

1. The plaintiff is an Irish dancing teacher and adjudicator who also owns and operates an Irish dance school based in Hertfordshire, England.

2. The defendant, An Coimisiúin le Rincí Gaelacha ('**CLRG**'), is a company limited by guarantee which administers the registration of certain Irish dancing competitions, teachers, adjudicators and clubs. As part of its role, CLRG runs and regulates Irish dancing competitions at both national and international levels (including the All Ireland and the World Dancing Championships). CLRG is the primary accreditation body for Irish dancing. In order to teach or adjudicate at any events organised by CLRG, a

teacher or adjudicator must be accredited by CLRG and must register annually with CLRG.

3. The plaintiff has a contractual relationship with CLRG created by her registration with them as a teacher and adjudicator. That contractual relationship is governed by the policies and procedures of CLRG which include a Code of Conduct implemented on 11 December 2016, Rules for Teachers and Adjudicators dated 1 January 2020 and a Discipline Procedures document dated 20 January 2021 - each of which will be considered in some detail in this judgment.

4. The background to this dispute relates to a complaint received by CLRG's Investigation Committee, An Coiste Faire, in July 2022. This complaint comprised screenshots of text messages alleged to have been exchanged between 12 named individuals (including the plaintiff) and an adjudicator for the 2019 All Ireland Championships which the complainant stated were a sample of the "*alleged corruption that takes place amongst registered members in the organisation*".

5. Further complaints were later received from the same complainant in relation to other individuals who were also alleged to have communicated by text with an adjudicator during dance competitions - such that there are now 44 people registered with CLRG who have had allegations of corruption made against them.

6. The nature of the allegation against the plaintiff is that she was involved in activity to influence the result of dance competitions.

7. Given the unprecedented nature and volume of the complaints it received, CLRG sought to identify an independent party who could assist it in the investigation of those complaints. On 4 October 2022 the chairperson of An Coiste Faire sent copies of the complaints it had received in July 2022 to a retired judge of the Court of Appeal, Mr

Justice Michael Peart. Mr Justice Peart's report will be considered in detail given its relevance to the matters at issue in these proceedings.

8. In advance of sending the complaints material to Mr Justice Peart, CLRG issued a statement to its worldwide membership on 26 September 2022 in which CLRG announced that An Coiste Faire had "*received allegations with supporting documentation, of several grievous breaches of our Code of Conduct*". CLRG issued other statements after that date which will be considered further in this judgment given that they form a central part of the plaintiff's argument that they amount to a pre-judgment and have irredeemably compromised the integrity of the disciplinary process taken against her.

9. On or about 26 September 2022, documents were uploaded to the internet by a party or parties whose identity remains unknown. The documents uploaded appear to be the supporting documentation which accompanied the complaints made to CLRG in July 2022. The plaintiff is identified. The uploading of the material resulted in significant postings and discussion on the Internet and the allegations received significant publicity and media attention. It is not entirely clear to this court from the affidavits filed whether the CLRG statement preceded or followed the uploading of the material to the Internet. The two events were however closely linked in time. CLRG have averred on affidavit that the statement they issued on 26 September 2022 "*was not made in response to the posting of these materials, as contended by the plaintiff, as that had not yet occurred*" (para 7(i) of the replying affidavit of Gráinne Ní Chonchubhair sworn 24 January 2023).

10. The plaintiff was first advised by CLRG on 10 October 2022 that it had received a complaint in relation to her. The letter sent to the plaintiff by CLRG on that date informed her that CLRG "*has decided it is necessary to conduct an investigation*" into

evidence which had been received by the chair of An Coiste Faire in relation to matters set out in an attached schedule. The brief outline of the evidence received was stated to be "*screenshots of conversations purportedly being actions taken by you to influence results of competitions*". The screenshots were not attached. The plaintiff was advised that the allegations were that she had breached the Code of Conduct in a number of respects and that her actions had brought CLRG "*into serious disrepute*". The plaintiff was advised that Mr Justice Peart had been appointed as an independent investigator and that the aim of the investigation "*is to establish the facts of the matter and reach a conclusion without undue delay*". The plaintiff was advised that she would be informed in writing of the outcome of the investigation once completed and that if it was found that there was a case to answer, the plaintiff may be invited to attend a formal disciplinary hearing. She was also advised that in cases where the incident "*is considered to be serious or Gross Misconduct, the outcome of the proceedings may result in the removal of your registration*". That letter does not refer to the possibility of immediate suspension depending on the outcome of the investigation. The letter advised the plaintiff to consult the Disciplinary Procedures Policy as ratified by CLRG in 2016 "*for further information as to the procedure to be followed and your position relative to these procedures*".

11. Mr Justice Peart submitted his report to CLRG on 11 October 2022.

12. On 12 October 2022 the plaintiff was informed in writing by CLRG that "*following an investigation into a complaint made against you, the investigators report recommends that a Discipline Committee [Discipline Hearing] is convened to deal with a case of Gross Misconduct*." The plaintiff was advised of the provisions of Clause 3.2 of the Discipline Procedures and that CLRG expected that the required actions on her part would be immediate. While it is not expressly so stated, the intent of this letter appears

to be to advise the plaintiff that she is suspended from officiating at or acting in any official capacity at any CLRG registered competition or event until formal disciplinary procedures have concluded. The letter confirmed that the Discipline Procedures Co-ordinator would be in touch with the plaintiff in due course with regards to the procedures leading to the discipline hearing.

13. The plaintiff's solicitor sought a copy of Mr Justice Peart's investigation report by letter dated 17 October 2022. The plaintiff was provided with a copy of that report on 7 November 2022.

14. By letter dated 25 October 2022 the defendant's solicitors confirmed that Mr Justice Peart had been appointed "*to screen the allegations and he has come to the conclusion that there is a prima facie case*". The letter also advised that CLRG had unanimously agreed to suspend standing orders and had resolved that the disciplinary panel would be comprised of individuals from outside the organisation. The letter emphasised that no conclusion on the allegations had been made but that the plaintiff stood suspended and "*will stand suspended until the inquiry is concluded*". The plaintiff states this is the first time she received any indication that there would be a unilateral departure from CLRG's Disciplinary Procedures document dated 20 January 2021.

15. Plenary proceedings issued by the plaintiff on 12 December 2022.

16. The plaintiff was first provided by CLRG with the actual screenshot material relating to the complaint against her on 19 December 2022, after she issued the within proceedings (paragraph 4 of the plaintiff's supplemental affidavit sworn 18 January 2023).

17. A motion seeking interlocutory relief was issued on 20 December 2022 and was heard by this court on 10 February 2023. At this interlocutory stage the plaintiff is seeking six alternative reliefs, all of which can be characterised as mandatory injunctions. The

reliefs sought by the plaintiff can be grouped into two specific issues: the imposition of the suspension, and the intention to proceed with the disciplinary hearing. The plaintiff brings this interlocutory application seeking to lift her suspension and/or prevent the disciplinary procedure from continuing until the full hearing of the action. The defendant strongly refutes the plaintiff's entitlement to either relief.

18. No date has yet been set for the plaintiff's disciplinary hearing nor is there any clear indication as to when this hearing may take place although it was originally represented to the plaintiff that the hearing was expected to take place in "*late January*". The defendant at para 13 of the replying affidavit of Gráinne Ní Chonchubhair sworn 24 January 2023 outlines that it has proven difficult to recruit independent people with suitable experience and availability to participate in the proposed disciplinary panel. Counsel for the defendant at the hearing of this motion confirmed that new discipline procedures have been drafted (as are exhibited as "GNC2" to the replying affidavit of Gráinne Ní Chonchubhair) and they are due to be voted on by CLRG membership later this month. He was unable to confirm however when the plaintiff's disciplinary hearing would take place.

19. I propose to consider this application under the 2 headings of (1) suspension and (2) the progress of the disciplinary hearing. It was accepted by the parties, and I agree, that in order to succeed at this interlocutory stage under either heading the plaintiff must satisfy the higher standard of a strong case likely to succeed at trial.

20. I proceed now to consider the complaint made against the plaintiff in this case and to compare and contrast it as necessary with the screenshots received regarding other individuals by CLRG from the same complainant in July 2022. All of these were later sent together to Mr Justice Peart to consider (being essentially one complaint received).

The complaint against the plaintiff

21. It is agreed that the totality of the evidence against the plaintiff at the present time comprises a single screenshot of a text exchange from February 2019 between the plaintiff and a Mr Kevin Broesler, who was at that time an adjudicator at the All Ireland Championships. While it is not possible to read the dates on the screenshot, it is understood that this text exchange took place during the 2019 All Ireland Championships. The text exchange is not exhibited in full, as it begins halfway through the first message. I accept therefore that the entire context in which the exchange was instigated is not clear.

22. What remains of the first exchange however is that the plaintiff states "*but would really appreciate a hand with my good u18 please. XX thank you (and a kiss emoji*)".

23. The reply from the adjudicator is "*absolutely, not a problem*" to which the plaintiff responds "*Xxxx Thank You*".

24. The main text message from the plaintiff then follows:

> "*Hi love… hope you are ok and enjoying it a little bit! I'm thinking of you xx.*
>
> *I have Erin tmrw u18 no 288…She was 2nd at NANs and 3rd at British Nats and our Oireachtas Champion as well… appreciate anything you can do… Thank you x*"

25. There then follows a thumbs up emoji from Mr Broesler and a kiss emoji from the plaintiff.

26. The last text on the screenshot from the plaintiff says "*Thank you so m(uch) xxxx delighted*".

27. The plaintiff argues that she sought no preferential treatment and received no such treatment. In fact the evidence is that Mr Broesler awarded lower marks to this particular candidate than any other judge on the panel.

28. Counsel for the plaintiff contrasts this text exchange with the other text exchanges included in the original complaint sent to CLRG on 28 of July 2022 and other text exchanges sent to CLRG on 29 July 2022. Those text exchanges were considerably more extensive. Some of them set out the number and first names of dancers who were due to dance in particular age group competitions. Others suggest a particular placing in the competition or a particular high score for some of the multiple dancers identified. Some text messages appear to be asking Mr Broesler to canvas other adjudicators. Some text exchanges suggest the possibility of "a medal" for candidates including those related to the texter. There is also one extensive text exchange with another individual which is of an entirely different character to every other text exchange. This is the exchange in which the texter offers sexual favours in return for specific adjudication outcomes.

29. The statement issued by CLRG on 26 September 2022 to its membership reports receiving a complaint which "*identifies individuals allegedly offering various inducements to promote dancers to a higher than deserved placing at particular competitions*".

30. Counsel for the plaintiff says that there is no evidence of any inducements being offered by the plaintiff or received by her. He says that the evidence against the plaintiff, which purports to suggest gross misconduct, does nothing of the sort. He says the evidence from the plaintiff will be that the information about her dancer was provided in response to a specific request by the adjudicator to do so and that no favouritism was sought or provided.

31. Counsel for the plaintiff argues that the manner in which all complaints (which he says are of a vastly different character to each other) were amalgamated and treated as one, has been particularly prejudicial to the plaintiff. He says that the single text exchange sent by the plaintiff could not amount to gross misconduct and had it been received on its own it could not have resulted in a suspension for the plaintiff. He says everyone has effectively been tarred with the same brush and that this cannot stand. The plaintiff's complaint must be considered on its own merits. He says there is no evidence that this has ever been done.

32. Counsel for the defendant says the text must be interpreted as a submission on behalf of the dancer. The fact that others were sending similar texts does not excuse the plaintiff's behaviour. He says any person in an adjudicative position would be alert to the inappropriateness of that exchange. Counsel for the defendant also says that the appropriate forum for disputing or explaining the allegation against the plaintiff is at the disciplinary hearing.

CLRG Policies as relevant to the suspension and the disciplinary hearing

33. It is worth noting at this point that CLRG registrants, such as the plaintiff, regularly play different roles at dance competitions. For example, they might be an adjudicator in a particular competition or they might, alternatively, enter their own students to compete in it. This interchangeability of roles in what must be a relatively tightknit group of teachers/adjudicators undoubtedly presents its own challenges. When one layers on to this the importance of subjective judgment to determine which dancer is the "winner" and the tightest of margins between elite dancers, it is clear that there is always a challenge to ensure public confidence in the impartiality of judging and the fairness of decisions arrived at in dance competitions. It is against that background that

I look now at CLRG Policies and Rules as applicable to the allegations against the plaintiff.

The CLRG Code of Conduct

34. The Code of Conduct (the '**Code**') is exhibited at MH1 to the plaintiff's grounding affidavit sworn 13 December 2022. The version exhibited was implemented on 11 December 2016. The Code has as its paramount objective the maintenance and improvement of ethical standards for everyone involved in Irish dancing. The introductory section makes clear that the Code applies not only to members of CLRG but to all stakeholders. The Code advises that a breach of the Code may give rise to disciplinary action and that ignorance of the Code is no excuse for unethical behaviour.

35. There are seven broad headings set out in the Code of Conduct including the following:

> "*Integrity. You should not place yourself under any obligation to an individual or group that may influence you in any way. Neither should you exert pressure on an individual which influences their decisions or actions.*
>
> *Honesty. You have a duty to declare any private interests that could be seen to influence your decisions, actions and/or behaviour. Where an individual has attempted to influence your honesty, this must be reported to an appropriate officer of [CLRG].*
>
> *Objectivity. Any decisions that you make in the course of your involvement in Irish dancing must be based solely on merit*".

36. The Code is clear that "private interests" (as referred to for example in the need for "Honesty" set out above), extends to those interests which "*arise from association with close family members, friends and work colleagues*". The Code states that

"*anyone corruptly receiving or giving any gift, loan, reward or advantage for doing or not doing anything, or for showing favour or disfavour to any other individual, will be subject to Disciplinary Procedures being invoked*".

37. In summary it is stated that

"*To fully comply with the Code of Conduct, all Stakeholders must:*

- perform duties with care, diligence, professionalism and integrity;

- strive for the highest ethical standards;

- behave at all times in a manner that enhances the reputation of [CLRG]

- behave in a manner consistent with the Code of Conduct;

- support and encourage others to comply with the Code of Conduct; and

- report any behaviour that is inconsistent with the Code of Conduct."

38. There is considerable emphasis in the Code on the reporting policy of CLRG and one of the main aims of the Code is to encourage any individual with concerns to voice those concerns. The Code outlines the range of actions which may be taken by CLRG on receiving a complaint. The options outlined include to investigate internally, transfer to another internal organisation body, refer to the police or to dismiss either without foundation but given in good faith or with a recommendation that it was a vexatious report. Mediation or agreed action without the need for investigation is also a possibility. While this list is not, I believe, intended to be exhaustive, it does not include (at least explicitly) the option of referring a complaint to an external independent expert, as occurred in this case.

Discipline Procedures

39. The discipline procedures document is dated 20 January 2021. It is the document which sets out the procedure on how CLRG manages breaches of the Code, the Rules and other policies. It provides for the possibility of a special investigation prior to disciplinary action being considered in certain instances. Cases of minor misconduct or unsatisfactory performance will generally be addressed informally.

40. Of central importance to this case are the provisions of clause 3.2.2 of the Discipline Procedures which states as follows:

"*3.2.2 An investigation of a potential disciplinary matter should be carried out without unreasonable delay to establish the facts of the case and may or may not result in formal action being progressed. In some cases, this will require the holding of an investigatory meeting with the individual or the collation of evidence by the investigating officer for use at any disciplinary hearing.*

(a) Where following an investigation into any complaint, a recommendation is made that a disciplinary committee is convened, in the case of any individual elected to An Coimisiún or any of its affiliated bodies, [he/she] will be obliged to temporarily step down from any position held while the process is ongoing.

(b) *Where an investigation into Gross Misconduct concludes there is sufficient evidence to invoke formal Disciplinary Procedures against any individual, that individual may not make any application to officiate at, or act in any official capacity at, any CLRG registered competition or event until formal Disciplinary Procedures have concluded*"

41. Reliance was placed by counsel for the plaintiff on the provisions of clause 4 of the Discipline Procedures which state that "*Prior to any disciplinary action being taken (punitive or non-punitive), the individual shall be called to a properly convened disciplinary hearing and be given the opportunity to explain the circumstances*". He says that the suspension imposed on the plaintiff was "disciplinary action" and that no such opportunity of explanation was given to the plaintiff prior to the imposition of the suspension. He says that the plaintiff was not even advised by CLRG that a complaint had been received about her for over two months and that she learned of this not from CLRG but from the posting of materials on the Internet.

42. The possible outcomes of formal action are identified in clause 3.6 of the Discipline Procedures. The sanction of a "*suspension of registration up to one year*" is classified as a "*punitive*" sanction. Counsel for the plaintiff says this is the sanction most closely analogous to what the plaintiff in this case has suffered since October 2022, with no end in sight. This, he argues, is a sanction envisaged as a possible outcome following a disciplinary hearing and not, as in this case, before a hearing has even been arranged. He notes that clause 3.10 refers to a suspension as a possible punitive action "*following from the application of disciplinary procedures*". He says that in those circumstances the procedure set out in clause 3.2 "*shall apply as appropriate*".

43. Counsel for CLRG says the plaintiff's registration is not suspended with CLRG and that the plaintiff remains free to teach and remains registered with CLRG. All she is suspended from is officiating at or acting in any official capacity at any CLRG registered competition or event, which is in line with the suspension envisaged by clause 3.2.2 above.

44. Clause 3.10.2 provides that "*Individuals receiving punitive action must always be informed in writing of the reasons why their conduct has led to the punitive action, the*

reasons why they are considered culpable and their right of appeal". Counsel for the plaintiff says this has not happened in the present case.

45. Given the importance of clause 3.2.2 (b) to CLRG's justification of the plaintiff's suspension, it is important to also consider in detail the provisions of clause 3.11 which outlines what is understood by the term "*Gross Misconduct*". Clause 3.11 is in the following terms:

> "*Gross misconduct is misconduct serious enough to undermine any future working relationship between An Coimisiún and the individual due to a breakdown of trust. Acts that constitute gross misconduct are those resulting in a serious breach of the Code of Conduct, the Child Protection Policy or the Social Media Policy and it will be for the disciplinary committee to make such a determination. Gross misconduct may therefore lead to summary expulsion without any prior warnings. Every allegation of gross misconduct requires to be investigated. The individual has the same rights to be heard as with any other disciplinary measures.*
>
> *Gross misconduct could include the following- this list is not exhaustive*
>
> - *theft, fraud and deliberate falsification of records or claims or theft from the organisation, peer or client*
> - *physical violence*
> - *serious bullying or harassment…*
> - *Criminal convictions having a material bearing on the ability to remain registered with An Coimisiún*
> - *bringing An Coimisiún into serious disrepute……*
> - *serious breach of confidence*

- *serious breach of Code of Conduct…*"

46. While there was some confusion at the hearing of this motion as to the date on which rule 3.2.2 (b) was introduced, the parties are now agreed that this rule was adopted in late February or early March 2021. This is two years after the conduct complained of but prior to the receipt of the complaint by CLRG.

47. The balance of the Discipline Procedures document contains appendices outlining the procedure to be followed at a disciplinary hearing, appeals committee procedure and the procedure to be followed at a disciplinary appeal. It is now clear that CLRG do not intend to follow the procedures set out in these appendices. Instead, the proposal now is for amended more detailed procedures to be put in place. CLRG says this is necessary given the gravity of the complaints, the number of individuals involved and the need to ensure the introduction of independent parties in those circumstances. While the plaintiff's counsel believed that the new procedures were "probably fine", he argued that it was not open to CLRG to unilaterally introduce new procedures which could be binding on the plaintiff. This particular argument is one I will return to in relation to the question as to whether the introduction of these new procedures should be a ground on which the proposed disciplinary process should be stopped.

<u>The Rules (for teachers and adjudicators)</u>

48. The Rules (exhibited at MH3 to the plaintiff's grounding affidavit) take effect from 1 January 2020. Rule 1.1 notes that in order to enter pupils in all CLRG sanctioned events a person must be "*registered and in good standing*" with CLRG. Rule 1.2 uses the same language in relation to those entitled to adjudicate at all CLRG sanctioned events. Counsel for CLRG confirms that the plaintiff is free to enter pupils in ongoing CLRG sanctioned events. He says that the suspension imposed on her means only that she

cannot adjudicate at those events. This situation does not appear to be on all fours with clause 1 of the Rules which states that in either instance a person must not only be registered but be "*in good standing*" with CLRG. Where the plaintiff is currently suspended, allegedly for gross misconduct, it is difficult to see how she remains "*in good standing*" with CLRG. If she does so remain, it is difficult to see how her "*good standing*" should be interpreted differently depending on whether she is teaching or adjudicating – the clauses in each case being worded in identical terms.

49. The Rules provide express prohibitions on adjudicators judging individuals who are related to them or whom they taught or coached in the previous two years. A long list of restrictions is set out in rule 3.2. This includes a restriction on the adjudication of dancers whose teacher has in the previous two years assessed pupils of the adjudicator. These provisions are clearly designed to create as much distance as possible between adjudicators and the dancers they assess at any particular competition. It appears that compliance with these restrictions must require some level of enquiry as to who the teachers are for particular dancers and therefore the provision of that information alone may be justified, and indeed necessary, in certain circumstances.

50. I propose now to consider how the complaint was initially investigated by CLRG using the services of retired judge Mr Justice Michael Peart and to consider the circumstances leading to the suspension of the plaintiff under rule 3.2.2(b).

The Report of Mr Justice Peart

51. The timeline of events produced by CLRG confirms that on 4 October 2022, Mr Justice Peart "*receives the files directly from chairperson of An Coiste Faire"*. No correspondence between CLRG and Mr Justice Peart was available to the court. Nor was the court provided with any terms of reference which had been given by CLRG to

Mr Justice Peart. It may be therefore that there were no terms of reference provided to him and that he was simply sent the complaints material without any further instruction.

52. This may explain the varying descriptions of Mr Justice Peart's role. For example, CLRG's statement to its members dated 26 September 2022 (prior to the complaints being sent to Mr Justice Peart) stated that "*the services of an independent former judge of the Court of Appeal has been engaged to oversee and supervise the immediate investigation into these matters*". The letter from CLRG to the plaintiff dated 10 October 2022, first notifying her of the complaint and the appointment of an independent former judge of the Court of Appeal to investigate matters, stated that "*The aim of the investigation is to establish the facts of the matter and reach a conclusion without undue delay*". The letter from solicitors for CLRG dated 25 October 2022 confirmed that "*a retired Court of Appeal judge was appointed to screen the allegations...".*

53. The report of Mr Justice Peart is exhibited at exhibit MH30 to the plaintiff's supplemental affidavit. The report is dated 11 October 2022. In its heading it is described as a "*Decision on Preliminary Investigation into allegations of breaches of the Code of Conduct*". The report itself contains the best and most reliable description of the task given to Mr Justice Peart. At paragraph 9 he states that

> "*Because of the nature and seriousness of the complaints which have been received, An Coiste Faire has decided that the preliminary investigation of the complaints should be delegated to, and carried out by, an independent person. I have been asked if I was prepared to undertake this task. Being completely independent of the CLRG, I have agreed to do so, and where appropriate, to make a recommendation for referral to the Disciplinary Committee for a full investigation and hearing of the complaint. At any such hearing those against whom the complaints are made will*

have the opportunity to be present any evidence they may wish to adduce by way of response to the complaint made against them".

This paragraph ties back to paragraph 6 of the report where Mr Justice Peart notes that in the ordinary course any complaint will first of all be investigated by An Coiste Faire (or a person to whom that task is delegated) in order to determine whether the allegation is sufficiently evidenced/substantiated to be referred to the disciplinary committee – i.e. for a determination as to whether a prima facie case is made out based on any evidence furnished with a complaint.

54. Mr Justice Peart quotes from the introductory section and the Summary to the Code of Conduct and it is clear therefore that the Code had been provided to him at some point.

55. Mr Justice Peart also refers to CLRG's Disciplinary Procedure document at paragraphs 5 and 6 of his report and it appears that a copy of that document was provided to him. He does not specifically reference other provisions of the Disciplinary Procedure including, for example, clause 3.2 of the Code or the definition of "gross misconduct".

56. The report confirms at paragraph 7 that a complaint has been received by CLRG

"*in which a number of serious allegations are made arising from text communications between a number of Irish dancing teachers (whose pupils were participating in certain competitions) and a member of the judging panel at the same competitions. Screenshots of the relevant text messages accompanied the complaint to An Coiste Faire"*.

Mr Justice Peart's report does not append the complaints received. However, it seems clear from paragraph 10 of his report that all of the complaints were sent to him (and not just the single complaint in relation to the plaintiff).

57. Mr Justice Peart states at paragraph 8 of his report:

"*broadly speaking, the allegation is that a number of such teachers who are identified as the authors of the text messages in question have sought to have their pupils given favourable treatment by the adjudicator who is the identified recipient of these messages, in exchange for favours, including sexual favours. Text messages are alleged to have been exchanged while competitions were in progress*".

Counsel for the plaintiff argues that paragraph 8 has been misinterpreted and treated as though it had said <u>all</u> such teachers rather than what it in fact says, namely "*a number of such teachers".* This he says is of particular relevance to the plaintiff whose text messages are, he submits, of an entirely different nature to the other messages considered by Mr Justice Peart.

58. Given the preliminary nature of the task assigned to Mr Justice Peart he confirmed that he did not communicate with either the complainant or any of the persons identified. Instead he confined his investigation to a review of the written complaint and the screenshots of the text messages. He noted at paragraph 10 "*these speak for themselves*". He states that

"*the question I must address is simply whether the complaint is sufficiently serious and sufficiently substantiated on a prima facie basis by the content of these text messages as to warrant a referral to the disciplinary committee in accordance with the Disciplinary Procedures established by the CLRG already referred*".

59. At paragraph 12 of his report Mr Justice Peart confirms that he is satisfied from his reading and consideration of the materials provided to him that

"*sufficient prima facie evidence has been provided in support of the complaint to determine <u>for the purpose of this preliminary investigation</u> (a) that if proven at a full hearing to be true, these allegations are of the utmost seriousness; (b) those persons*

who engaged in these text conversations are identified; and (c) that, subject to what other evidence may emerge at any full hearing, the alleged conduct of those persons could be found to breach the Code of Conduct in several respects."

60. He concludes his report at paragraph 13 in the following terms: –

"*In my view sufficient evidence to support the complaints made has been adduced by the complainant for An Coiste Faire to request that the matter now be fully investigated by the Disciplinary Committee, and I make that recommendation*."

61. There was, at the hearing of this motion, disagreement between counsel as to the meaning and effect of Mr Justice Peart's report and recommendation.

62. Counsel for the plaintiff argues that the report made no finding of gross misconduct against the plaintiff. He says that Mr Justice Peart made no finding at all that there was a sufficient or indeed any basis for clause 3.2 to be invoked against the plaintiff to suspend her immediately. All that was recommended was for the full suite of complaints to be fully investigated by the Disciplinary Committee and that, if proven and subject to other evidence that might emerge, the alleged conduct could be found to breach the Code. Counsel for the plaintiff does not equate allegations "*of the utmost seriousness*" with "gross misconduct". He says there was, understandably, no consideration of the individual complaints by Mr Justice Peart as he had not been asked to address sanctions for individual parties. The report therefore considers the totality of all complaints received in July 2022. The plaintiff says that while the accusation of seeking favouritism from adjudicators is common to all 12 individuals, the material supplied as evidence differs considerably from case to case. Mr Justice Peart's report does not contain any statement to indicate that he considered the plaintiff's individual circumstances. The fact that Mr Justice Peart recommended the matter be investigated

by the disciplinary committee does not equate to a finding of gross misconduct. A disciplinary committee is entitled to investigate any form of conduct, and not just conduct limited to gross misconduct.

63. The Defendant says in its legal submissions that whether Mr Justice Peart used the words "gross misconduct" is immaterial in circumstances where he stated that "*these allegations are of the utmost seriousness*". The defendant says that "*utmost seriousness*" can mean nothing other than gross misconduct.

64. The defendant also says that the suspension of the plaintiff as adjudicator is an automatic consequence of the initiation of the disciplinary hearing so the plaintiff's application stands and falls on whether this court is persuaded to prevent the disciplinary procedure continuing. I do not agree with this analysis. I believe that there are two separate questions before the court and they are not so interlinked as the defendant argues.

65. The defendant says that paragraph 3.2.2 (b) comes into effect in any case where an investigation into gross misconduct concludes that there is sufficient evidence to invoke the formal disciplinary procedures against an individual. The defendant says that the outcome of Mr Justice Peart's investigation was that a discipline committee was being convened to deal with the case of gross misconduct. The defendant states that it did not decide to impose the provisions of paragraph 3.2.2 (b) in this case. Counsel in his submissions says that this was not a discretionary suspension but was rather a holding suspension of automatic application where its criteria are met.

66. There is clearly a requirement that an investigation into "gross misconduct" be invoked before paragraph 3.2.2 (b) of the Discipline Procedure can apply to suspend an individual from adjudication entitlements. A disciplinary investigation into matters

other than gross misconduct would not trigger a suspension under the Discipline Procedure. Referral to a disciplinary hearing therefore in my view is not of itself sufficient – the disciplinary hearing must be one relating to alleged gross misconduct. The question therefore arises as to who, if anyone made a *prima facie* finding of gross misconduct against the plaintiff in this case, such as would trigger the provisions of clause 3.2.2(b) regarding her suspension. The defendant says it is relying on Mr Justice Peart's report for this finding, but that report does not make a finding of gross misconduct against the plaintiff. While the statements considered below show that CLRG regarded the allegations as gross misconduct, there is no evidence that the plaintiff's case was individually considered by CLRG.

67. Before applying the law to the facts of this case it is worth considering the various press statements released by CLRG given the importance that the plaintiff attaches to the impact of those statements on the fairness of the procedures applied to her.

The CLRG statements

68. The first press statement issued by CLRG was on 26 September 2022. It advised its membership of the receipt of the complaints and the engagement of a former judge of the Court of Appeal to oversee and supervise the immediate investigation of these matters. It notes that "*this grossly unethical behaviour must be eliminated from our dance genre*". It asks for persons with information to come forward. It also confirms that "*An Coimisiún regards such breaches to be Gross Misconduct*" and states that any registered member found to be engaged in such practices will be subject to due and full process under CLRG disciplinary procedures.

69. The plaintiff had not been made aware by CLRG that a complaint had been made against her at the time this first statement issued.

70. A second statement was issued by CLRG on 4 October 2022. By that stage the plaintiff had still not been advised of the complaint against her by CLRG but the complaints material had been uploaded to the Internet and so she was aware of matters from that source. This second statement confirmed the receipt by An Coiste Faire of allegations with supporting documentation "*of several grievous breaches of our Code of Conduct*". The statement repeated that "*An Coimisiún regards such breaches to be Gross Misconduct*." A link to the published Disciplinary Procedures was embedded in the statement. The statement confirmed that "*This process has already started and the principles of natural justice apply. To ensure the integrity of the process and until it is complete, no further comments will be made*".

71. However further comments were made by CLRG. A letter was sent by CLRG on 12 October 2022 to its members. It advised members that the matter had been referred for a full disciplinary hearing following receipt of the report from the judge. The letter to members stated that "*We would not normally inform the membership of such actions. However to allay the fears that "nothing is being done", we want to ensure that you, your dancers and parents are kept up-to-date with developments*". The letter stated that "*every person against whom an allegation is made has a right and entitlement to due process*". It advises that any person referred to disciplinary hearing is subject to clause 3.2 of the process and the clause is set out in full. This letter issued to the membership on the same date as the plaintiff herself was advised that Mr Justice Peart had delivered his report.

72. A further statement was issued by CLRG on 20 October 2022. It referred to the ongoing allegations in mainstream and social media and "*the devastating impact these have had on the integrity of competitions and the standards of our art form – not to mention the negative impact on the mental and emotional well-being of individual*

dancers". It noted that CLRG has "*a well-established disciplinary process*" and that until the disciplinary process was complete CLRG "*is restricted from commenting on the names of those involved and the nature of any allegations*". A timeline of events was attached to the statement to dispel "*disinformation circulating in mainstream and social media alleging that CLRG "sat" on a complaint since July*". The statement went on to ask members and the wider public to exercise caution when making statements on social or mainstream media. It noted "*to ensure a just outcome, we cannot afford to have our processes undermined by careless and spurious comments, however well-intentioned they may be*".

73. Yet another statement issued by CLRG on 8 December 2022 which referred to the widely reported initiation by them of a disciplinary process into allegations of wrongdoing. The statement advised that 44 cases had now been recommended to proceed to full disciplinary hearing and that all the individuals have been informed that clause 3.2.2 (a) and (b) had been invoked. The statement confirmed that the cases would be heard by an independent external disciplinary panel and noted that "*CLRG regards all allegations of wrongdoing with the utmost seriousness"*.

74. The plaintiff argues that these statements are highly prejudicial to her, pre-judge the outcome of the disciplinary process and irredeemably compromise that process from the perspective of fair procedures. Counsel for the plaintiff also says that the early statements prevent the plaintiff from raising any possible defence regarding the culture of behaviour within CLRG and that the effect of that statement has been to prevent witnesses being called on this issue for fear of themselves becoming embroiled in disciplinary procedures.

75. Counsel for the defendant says there is no such concern with the statements as issued from the perspective of fairness of procedures. He says there has been no attempt to

interfere with witnesses and that in any event the culture of behaviour is not one which would provide a defence to the behaviour complained of.

Relevant legal Principles

76. The parties are agreed that the relief sought by the plaintiff amounts to mandatory injunctive relief and she will therefore need to establish a strong case likely to succeed at trial if she is to be granted interlocutory relief by this court in relation to either the suspension or the continuation of the disciplinary process against her. If she does this, she will still need to establish an entitlement to relief on the grounds that damages are inadequate for her and that the interests of justice require injunctive relief to be granted to her. No final determination on any issue of law or fact can be made by this court on this interlocutory application.

77. While the parties are in a contractual relationship governed by the rules of CLRG, the plaintiff submits that CLRG bears many of the characteristics of a public law body. The defendant disputes this pointing out that it is a private organisation and that the relationship is manifestly private and wholly based on a contract entered into between the parties. Much of the case law regarding natural justice and fairness in disciplinary procedures arises in the context of employment law and/or judicial review. The plaintiff argues that while she is not an employee of the defendant, nevertheless the case law based on such a relationship is apposite in the circumstances of this case where she cannot earn her livelihood in Irish dancing without registration with CLRG.

78. The plaintiff submits that any body which makes decisions affecting the rights of individuals must act in a manner consistent with natural justice and fair procedures. I fully accept that, even without a formal employment relationship, the plaintiff in this

case is entitled to natural justice and fair procedures. As noted by the Supreme Court in *Glover v BLN Ltd* [1973] IR 388 at page 425:

> "*This court in In re Haughey held that that provision of the Constitution was a guarantee of fair procedures… public policy and the dictates of constitutional justice require that statutes regulations or agreements setting up machinery for taking decisions which may affect rights or impose liabilities should be construed as providing for their procedures*."

79. The defendant did not oppose the idea that the plaintiff is entitled to fair procedures and natural justice in this case. Those rules of natural justice include the right of a person who may be adversely affected to know the basis on which it is said that they may suffer to their detriment and that such person be given an opportunity which, in all the circumstances, affords them a reasonable opportunity to test and address the basis on which it might be said that an adverse result can arise against them.

80. The defendant stressed that in this case the court was being asked to intervene in a private disciplinary process involving a most serious complaint of misconduct and that there was no evidence that CLRG had shown itself incapable of conducting a fair process. CLRG argues therefore that not only is the plaintiff's complaint premature, in that the proposed procedure has yet to be approved and undertaken, but also that the plaintiff has made no credible complaint that is deficient in any respect.

The lifting of the suspension imposed by CLRG

<u>The characterisation of the suspension as a holding suspension or otherwise</u>

81. The first relief sought by the plaintiff in this case is that the suspension imposed on her on 12 October 2022 should be lifted pending the determination of these proceedings or until the findings of any Disciplinary Hearing have been published.

82. It has been held that there are two forms of suspension, as explained by the High Court in *Quirke v Bord Luthchleas na hEireann* [1988] IR 83 where at p.87-88, Barr J stated:

> "*the suspension of a member by a body such as B.L.E. or a trade union or professional association may take two different forms. On the one hand, it may be imposed as a holding operation pending the investigation of a complaint. Such a suspension does not imply that there has been a finding of any misbehaviour or breach of rules by the suspended person, but merely that an allegation of some such impropriety or misconduct has been made against the member in question. On the other hand, a suspension may be imposed not as a holding operation pending the outcome of an inquiry, but as a penalty by way of punishment of a member who has been found guilty of misconduct or breach of rules. The importance of the distinction is that where a suspension is imposed by way of punishment, it follows that the body in question has found its member guilty of significant misconduct or breach of rules. The gravity of that finding is proportionate to the length of the suspension imposed and the effect of it on the person suspended… even after the period of suspension expires, the moral implications of its position remain*."

83. In *Deegan v Minister for Finance* [1998] IEHC 68, the applicant civil servants were suspended without pay on foot of what were described as grave irregularities warranting disciplinary action pursuant to section 13 (1) of the Civil Service Regulation Act 1956. The Supreme Court held that where suspension constitutes a disciplinary sanction, the person affected should be afforded natural justice and fair procedures before the decision to suspend him or her is taken. However, where a person is suspended so that an enquiry can be undertaken as to whether disciplinary action should be taken against the person concerned, the rules of natural justice may not apply. This case is not on all fours with the present situation as the applicants were employees who

were receiving two thirds of their pay and the relevant rules provided them with an immediate right to appeal against the imposition of the holding suspension. There is no such rule or right of appeal against the suspension in the present case.

84. In *Flynn v An Post* [1987] IR 68, the Supreme Court considered the permissible duration of the suspension of a civil servant. The plaintiff sought to impugn the validity of his suspension on the ground that even if it was initially valid, it ceased to be so after the date on which it would have been reasonably practicable to have held a full hearing into his suspension. That aspect of the plaintiff's claim was upheld on appeal to the Supreme Court, by majority decision with the court finding per McCarthy J at page 80 that "*the suspension, which was intended to be, as it ought to be, of short duration pending a more detailed investigation and final decision, became invalid by the passage of time*".

85. The plaintiff in this case argues that the time which had elapsed in *Flynn* was three months. In the present proceedings, the plaintiff has already been suspended for four months and the formation of a disciplinary panel and the commencement of the disciplinary process are nowhere in sight. The defendant argues that the decision in *Flynn* can be readily distinguished from this case. The defendant says the case is authority for the proposition that if the hearing is not conducted at the earliest reasonably practical time, then the suspension becomes invalid. The defendant submits that it has, not yet been reasonably practical for the disciplinary hearing to take place in this case because of the need to amend the procedures in light of the extraordinary nature and gravity of the complaints. Counsel for the defendant says passage of time alone is not sufficient to invalidate a suspension and the wider context must be considered. What may be reasonably practical in one case may not be reasonably practical in another.

86. In the case of *Governor of Bank of Ireland v Riley* [2015] IEHC 241 the High Court (Noonan J) noted at paragraphs 41 and 42 that

> "*even a holding suspension ought not to be undertaken lightly and only after full consideration of the necessity for it pending a full investigation of the conduct in question. It will normally be justified if seen as necessary to prevent a repetition of the conduct complained of, interference with evidence or perhaps to protect persons at risk from such conduct. It may perhaps be necessary to protect the employer's own business and reputation where the conduct in issue is known by those doing business with the employer. In general, however, it ought to be seen as a measure designed to facilitate proper conduct of the investigation and any consequent disciplinary process… The corollary presumably therefore is that an employee ought not be suspended where suspension is not necessary to facilitate these matters.*".

87. In the recent Court of Appeal decision in *O'Sullivan v HSE* [2022] IECA 74, the Court of Appeal considered the suspension and proposed dismissal of Mr O'Sullivan from his position as consultant in St Luke's Hospital Kilkenny. Noonan J, commenting on the suspension of the applicant in that case noted at para 105 that

> "*A suspension of this nature, particularly in a high profile case like the present which attracted national media attention, can result in reputational damage which may be, or become, irreversible, irrespective of the outcome of any inquiry. It is not merely reputationally and psychologically damaging, but financially damaging also*".

He went on to note at para 107 that these factors "*make it imperative that the disciplinary process should proceed and be brought to a conclusion as speedily as reasonably possible*". The court noted that the applicant had been under investigation

by the HSE for a period of 27 months to the date of the court's judgment and that a further lengthy period of time was likely to occur in having the review committee convened and in a position to make its decision. At para 115 of his judgment, Noonan J stated "*in my view the employer is duty-bound to re-evaluate the necessity for the continuation of that suspension. That seems to me to arise as a matter of basic fairness, irrespective of whether a review is specifically sought*." The Court of Appeal set aside the suspension. I accept that the relationship in that case was an employment relationship which distinguishes it from the present case. The time periods involved were also lengthier than the periods which have elapsed to the present date insofar as this plaintiff is concerned. However, the case is authority for the importance of minimising periods of suspension which have been imposed on parties pending the holding of a disciplinary hearing.

88. The plaintiff asserts that the suspension imposed on her, while appearing to be a holding suspension is, in reality, more in the way of a punitive suspension. In that regard the plaintiff notes that she is unable to earn any money from adjudicating and this distinguishes her from cases in which parties on a holding suspension are retained on either full or nearly full pay. The defendant says there is no employment relationship between the parties and that the plaintiff is free to continue to teach or enter her students into competitions. The defendant says the suspension is clearly an interim measure, a holding position and not a punitive sanction.

89. The plaintiff also argues that there appears to be no prospect of the disciplinary hearing being conducted expeditiously, as the defendant now intends to conduct the disciplinary hearing by way of new procedures which are only at draft stage and yet to be voted on by members. The plaintiff submits that the delay caused by the defendant's desire to proceed under new disciplinary procedures renders the plaintiff's continued suspension

invalid and the plaintiff relies on the Supreme Court decision in *Flynn*. The defendant says there is a wider context in this case and given the unprecedented nature and volume of the allegations, a special approach had to be adopted to deal with the situation. This new approach required the instruction of an external independent person to review the allegations and thereafter to find and retain a panel of independent and suitably qualified people to deal with the allegations. The defendant also says it was necessary to draft updated procedures for the disciplinary hearings as the current procedures are wholly inadequate for a task of this magnitude. The defendant says once those procedures have been voted upon and accepted, the plaintiff's disciplinary hearing will be in a position to take place. The defendant distinguishes the *Flynn* case on the basis that passage of time alone is not sufficient to invalidate a suspension and that the wider context must be considered in each case.

90. The final argument advanced by the plaintiff in respect of the nature of the suspension is that a holding suspension is one in which no finding of wrongdoing has yet been made against the suspended party. The plaintiff says this however is inconsistent with the statements already published by CLRG (which are set out in some detail earlier in this judgment). The plaintiff also refers to the fact that an information sheet was compiled by it which it believes was sent to Mr Justice Peart which describes the screenshot relevant to the plaintiff as being evidence of "*M Hennigan requesting favours from K Broesler*". The plaintiff says this statement is not only factually inaccurate, but it was clearly prejudicial to what was purported to be an independent appraisal of the evidence by Mr Justice Peart.

91. The defendant denies it has predetermined the plaintiff's guilt. It says that the statements must be read in their entirety, that the complaints are stated to be allegations and that it was intended to investigate them while ensuring fairness, transparency and

thoroughness. The defendant says no reasonable reading of the statements could lead to the conclusion that any aspect had been prejudged. The defendant also denies that the information sheet prepared by it for Mr Justice Peart is prejudicial. They say this was "shorthand for the allegation" against the plaintiff. They say there is nothing to suggest that Mr Justice Peart's view was affected by this wording.

Whether the plaintiff has a strong case that she has not been afforded fair procedures in relation to her suspension

92. The plaintiff argues that the only evidence against her is a text exchange dating back four years which is not exhibited in full and therefore fails to reveal the context in which it was instigated. The plaintiff says no preferential treatment was explicitly sought and no preferential treatment was received. The plaintiff complains regarding the manner in which the defendant has treated matters as a "group complaint" concerning 12 individuals in July 2022 and says that no proper consideration was given to the plaintiff's position on its own merits. It is argued that the defendant appears to be relying on the perceived wrongdoing of other adjudicators as a reason for the suspension of the plaintiff. The plaintiff says that if any enquiry had been made from her she could have advised that she was responding to a request from the adjudicator to identify her students during the adjudication phase. The defendant says these matters are matters for the disciplinary hearing as they relate to the substance of the allegations made against the plaintiff. In relation to the criticisms of a "group complaint" the defendant says it has simply instigated the disciplinary process on the basis of the report of Mr Justice Peart and that the forum for disputing the allegation is at the disciplinary hearing.

93. The plaintiff also argues that the defendant's reliance on section 3.2.2 (b) is not justified on the evidence. That provision, as already examined in some detail, requires an initial investigation to conclude that there is prima facie a case of "gross misconduct" to answer before a suspension can be imposed. The plaintiff says that Mr Justice Peart comes to no such finding in relation to gross misconduct. While the report suggests that the matter be investigated by the disciplinary committee, such a committee is entitled to investigate any form of conduct, and not just gross misconduct. The defendant says that the language used by Mr Justice Peart of "*utmost seriousness*" can mean nothing other than "gross misconduct".

94. Finally, the plaintiff argues that the delay and drawn-out nature of her suspension with no disciplinary hearing in sight is repugnant to any concept of natural justice. This is rejected by the defendant who says the plaintiff cannot complain that a procedure is being arranged to ensure that the matter will be determined fairly, efficiently and impartially and to the highest standard of adjudication. The defendant says expedition must be balanced with procedural fairness in the interests of all concerned, including the plaintiff.

95. Having considered all the arguments advanced by the parties regarding the suspension I have come to the view that the plaintiff has established a strong case that she was not afforded natural justice in relation to her suspension. I have taken the following matters into account in reaching that decision.

96. There is no clear evidence before the court that anyone made a prima facie finding of gross misconduct against the plaintiff. There is no certainty that the text exchange involving the plaintiff, on its face, meets the threshold of gross misconduct. That is not to say it could not amount to gross misconduct once fully investigated, but without further enquiry, it is not certain that it gives rise to a *prima facie* case of gross

misconduct. The wording of the exchange is equivocal. It does not expressly seek or offer any favourable treatment, and the evidence is that none was received. The complaint against the plaintiff was considered not as a standalone complaint but rather, in the eye of a media storm, in tandem with multiple other complaints of a different and more explicit character. This court has a concern that the manner in which the plaintiff's complaint was amalgamated with others may have tainted the complaint against the plaintiff and could have resulted in a meaning being ascribed to it that it might not otherwise have borne had it been viewed in isolation or received in a different context.

97. The plaintiff was told of the complaint against her on 10 October 2022. A mere two days later on 12 October 2022 she was advised that clause 3.2.2(b) applied to suspend her from adjudication. That clause was not in place at the time of the text exchange and was only introduced two years later. Furthermore, no opportunity was given to the plaintiff prior to her suspension to explain the text exchange or to comment on its context or the incomplete text message which preceded it. This explanation could have been important given the generalised nature of the text exchange involving the plaintiff. It is not sufficient that the plaintiff can give this explanation some time in the future at a disciplinary hearing, by which time she may have been suspended for a considerable period of time.

98. CLRG say that it applied clause 3.2.2 (b) "automatically" on foot of the report from Mr Justice Peart. However, Mr Justice Peart's report does not reference suspension at all. He recommends that the Disciplinary Committee fully investigate the matter. The prima facie evidence he refers to is expressly highlighted by him as being "*for the purpose of this preliminary investigation*". It is not intended to be *prima facie* evidence for a later disciplinary investigation, still less *prima facie* evidence for a disciplinary

investigation into gross misconduct. It is clear that an investigation under the Disciplinary Procedures can be into matters other than gross misconduct (see for example clause 3.2.2(a)) so a recommendation to refer a matter for investigation by the Disciplinary Committee cannot be limited to an investigation into gross misconduct only. There is no evidence that the comments of Mr Justice Peart regarding the "*utmost seriousness*" of the allegations were intended by him to refer specifically to the single text exchange involving the plaintiff.

99. If there is no *prima facie* evidence of gross misconduct then clause 3.2.2(b) does not apply.

100. Even if I am wrong and clause 3.2.2(b) were to apply, the question arises as to whether it can be interpreted as entitling CLRG to suspend the plaintiff in the absence of any engagement at all with her before the suspension is imposed in circumstances where there could be another interpretation of the text exchange. I do not believe such an application of the clause would be likely to satisfy the requirements of natural justice, particularly given that there is no right of appeal provided for in the Discipline Procedures and where the suspension could last for an indefinite time until a disciplinary hearing is held.

<u>Where the balance of convenience lies</u>

101. Having established a strong case on the suspension, this court must now consider the balance of convenience (to include the adequacy of damages) to determine whether injunctive relief should be granted to the plaintiff in relation to her suspension.

102. Counsel for the plaintiff relied on the *O'Sullivan* decision to identify the prejudice to the plaintiff if her suspension was to continue. In *O'Sullivan* the Court of Appeal held that, in a situation said to be broadly analogous to that facing the plaintiff:

"*a suspension of this nature, particularly in a high-profile case like the present which attracted national media attention, can result in reputational damage which may be, or become, irreversible, irrespective of the ultimate outcome of any inquiry. It is not merely reputationally and psychologically damaging, but financially damaging also*".

103. Counsel for the plaintiff argues that the plaintiff's reputation is being eroded every week that passes that she remains suspended. In the close-knit community of Irish dancing, the plaintiff's suspension is widely known and it is argued that as long as it continues, it is inevitable that parents will be reluctant to enrol their children as dancers in the school run by a person over whom a cloud of impropriety hangs. The plaintiff says that the continued suspension exacerbates her stress and well-being and that she is facing an indefinite period of suspension (making the suspension akin to a punitive suspension) in circumstances where there is no clarity whatsoever when a disciplinary hearing might take place. Counsel says that by the time any disciplinary hearing is concluded, even if the plaintiff's suspension is lifted at that point, the damage done to the plaintiff will be irreparable.

104. Counsel for the defendant argues that the plaintiff's suspension is limited to acting as adjudicator or in any other official capacity. In the meantime, the plaintiff may continue to earn a living as a teacher and enter students into CLRG events. The defendant says that its own reputation may suffer harm if it is held that a person accused of gross misconduct in the adjudication of competitions continues to act as an adjudicator while those serious allegations remain unresolved.

105. I am satisfied that the plaintiff would not be adequately compensated by an award of damages were she to succeed at trial in relation to the lawfulness of her suspension but remained suspended during that time. While much of the damage complained of by the

plaintiff arising from her suspension may perhaps have already been incurred, I believe there continues to be ongoing prejudice and damage to the plaintiff's health, reputation and well-being that does not lend itself easily to being compensated by an award of damages.

106. I believe the balance of justice in this scenario must prefer the outcome which best supports the application of natural justice to the plaintiff. Ultimately the reputation of CLRG will also benefit from ensuring that occurs. There is no evidence of any complaints at all against the plaintiff either pre or post the single complaint the subject of these proceedings and so no evidence of any risk or repeated actions that might require to be restrained pending a disciplinary hearing.

Restraining the disciplinary procedure

<u>The standard of review for restraining an ongoing disciplinary procedure</u>

107. In *Becker v St Dominic's Secondary School* [2006] IEHC 130, Clark J (as he then was) considered the circumstances in which the courts should intervene to restrain an ongoing disciplinary process prior to its completion. At para 12 of his judgment Clark J confirmed "*a court should only intervene in the course of an uncompleted disciplinary process in a clear case*." He went on to clarify at paras 14 to 16 of his judgment that

> "*In general terms, it seems to me that the circumstances in which the Court should intervene is where a step, or steps, or an act, has been taken in the process which cannot be cured and which is manifestly at variance with the entitlement to fair procedures…. the Court should not assume that unfairness will occur in the future, nor should it make assumptions about the likely future course of the process. The court should intervene only where it has been demonstrated that the process has already been so tainted with an absence of fair procedures that it cannot be allowed*

to continue.… very different considerations apply where it is sought to prevent a process being continued with on the one hand, and where the process has been completed and the Court is in a full position at trial to take a view as to whether it was properly conducted on the other hand."

108. Clark J reiterated and expanded on this position in a later decision of the Supreme Court in *Rowland v An Post* [2017] IESC 20, [2017] 1 IR 355. At para 10 of his judgement Clark J noted that

"*if, at every stage of the disciplinary process, a party could secure an interlocutory injunction if there was even an argument about whether the procedures adopted were permissible, the practical consequences for any effective disciplinary process would be obvious*".

109. At para 11 of his judgment Clark J noted that

"*Many errors of procedure can be corrected by appropriate measures being taken before the process comes to an end. Decision makers in such a process have a significant margin of appreciation as to how the process is to be conducted (subject to any specific rules applying by reason of the contractual or legal terms governing the process concerned*".

He continued at para 12 that

"*Precisely because procedural problems can be corrected and because there may well be a significant margin of appreciation as to the precise procedures to be followed it will, in a great many cases, be premature for a court to reach any conclusion on the process until it has concluded*".

110. The Supreme Court in *Rowland* recognised the possibility a limited number of cases where it would be appropriate to intervene by way of restraining any process. Those

instances were to be confined to cases where the conduct of the process, up to the point when the court was asked to review it, was such that it is clear that the process had gone irremediably wrong. At para 14 Clark J explained

> "*the court must be satisfied that it is clear that the process has gone wrong, that there is nothing that can be done to rectify it and that it follows that it is more or less inevitable that any adverse conclusion reached at the end of the process would be bound to be unsustainable in law. In any case where the plaintiff cannot establish that the case meets that standard it will ordinarily be inappropriate for the court to intervene at that stage but rather the process should be allowed to continue to its natural conclusion at which stage it can, if any party wishes it, be reviewed*".

111. Clark J also noted that a finding by a court invited to intervene in an ongoing process to the effect that it is premature to find the process defective does not mean that a court later reviewing an ultimate adverse decision made at the end of the process must necessarily disregard the points previously raised. He stated in para 16 of his judgment that

> "*Such points may not be sufficiently clear, at the stage of the challenge which is found to be premature, to justify intervention. But they, either alone or taken in conjunction with the remainder of the process, may nonetheless be sufficient to persuade a court at the end of the day that the ultimate decision cannot be sustained*".

112. An additional legal authority relied upon by the plaintiff in oral argument is the judgment of Butler J in *Mason v ILTB Limited t/a Gillen Markets* [2021] IEHC 477. The plaintiff argues that this authority is relevant to this case in circumstances where it is argued that CLRG has already prejudged the plaintiff's guilt and has clearly

demonstrated this by the various statements it has issued to date. In *Mason,* the plaintiff sought an interlocutory injunction restraining his employer from taking steps directed towards the termination of his employment. In that case, having considered the evidence, Butler J formed the view that the correspondence issued to the plaintiff confirmed that the defendant employer "*was proposing to go through the formality of an investigation in order to support a decision which it had already reached*" (para 34). Butler J distinguished the *Rowland* line of authority on the facts before her because the dispute in *Mason* did not concern the procedures to be applied in the carrying out of an investigation or a disciplinary process. Instead "*what is at issue is whether the employer has already reached conclusions adverse to the plaintiff employee in advance of any investigation or disciplinary process taking place*" (para 43). The court found that the process in *Mason* had gone irredeemably wrong from the outset and that this could not be remedied by the imposition of a proposed "*gold standard*" independent investigation that would take place in the future. CLRG say that they have not prejudged anything and that the statements they issued cannot reasonably be interpreted in this way.

Whether the plaintiff has put forward a sufficiently strong case to restrain the disciplinary procedure

113. I do not believe on the evidence in this case that there is the level of conclusiveness of pre-determination as was available to the court in *Mason*. I therefore distinguish that authority on the facts of the present case. That is not to say that the plaintiff loses any entitlement to complain about the statements which have already been issued. It is in my view unwise for any party conducting an investigation/disciplinary process to issue public statements while that process is in train. The priority must be preserving the integrity of the investigation/disciplinary process rather than managing publicity or members' queries.

114. The question which I believe arises on this aspect of the plaintiff's case therefore is whether she has established at this point in time that the disciplinary process has gone irremediably wrong and that there is nothing that can be done by CLRG to rectify it.

115. The plaintiff relies on the following matters.

(a) She was not notified of the receipt of a complaint against her in July 2022 until 10 October 2022. She was not provided with the actual screenshot containing the complaint against her until 19 December 2022, after she issued proceedings. She says this behaviour suggests that CLRG is incapable of conducting a disciplinary process which protects her most basic rights to confidentiality and procedural fairness.

(b) CLRG failed to respect the confidentiality of the material provided to them.

(c) There was no enquiry made by CLRG to check the authenticity of the text exchange or to explain why the full text message was not exhibited by the complainant.

(d) The manner in which a *prima facie* finding of wrongdoing has been arrived at, leading to the convening of a disciplinary panel to investigate, is contrary to the rules of natural justice. Furthermore, CLRG added its own opinion as to the merits of the complaint against the plaintiff before providing the evidence to Mr Justice Peart, despite assurances that his work was entirely independent of CLRG.

(e) There has been an unacceptable delay and inefficiency by CLRG in deciding on the manner in which the disciplinary hearing will be conducted. CLRG has not yet commenced the process of accumulating evidence before any hearing can take place. This delay is highly prejudicial to the plaintiff who remains on

suspension suffering considerable loss, stress and anxiety. The plaintiff says this casts serious doubt over the ability of CLRG to progress a disciplinary hearing with any degree of efficiency.

(f) Furthermore, the plaintiff says that the proposed introduction of new disciplinary procedures by CLRG is highly concerning. These new procedures will require to be ratified by CLRG membership at an unspecified date in the future and could drag out the process unacceptably. The plaintiff says the defendant is attempting to create new disciplinary procedures and apply them retrospectively to behaviour and a complaint which long predate their existence. The plaintiff says it is one of the most fundamental aspects of natural justice that a person against whom the complaint is made is aware of the possible sanctions that may be imposed and the disciplinary procedure that may be invoked against them at the time that the alleged behaviour takes place. The plaintiff has not agreed to any new disciplinary procedures which are now proposed to be introduced. If the existing procedures are inadequate as CLRG argue, the plaintiff says this problem lies with CLRG and it is clear that their entire approach to the disciplinary hearing has gone irremediably wrong.

116. I have considered the arguments advanced by the plaintiff. I find that her complaints, however valid, do not demonstrate that at this point in time the disciplinary process has gone irremediably wrong. I therefore hold that the plaintiff has not made out a strong case to halt the disciplinary process against her. In so finding, I have been influenced by the following points.

117. The plaintiff now has the complaint materials. There is no evidence that the leaking of these materials on the internet was due to any failure on the part of CLRG to maintain the confidentiality of the materials they held. I must assume that CLRG will studiously

protect the confidentiality of any new material it receives or creates in the context of the ongoing disciplinary process.

118. The plaintiff does not deny the text exchange took place. The statements and actions of CLRG to date, which she alleges pre-judged her guilt, do not appear to me to be conclusive on this point. Any previous comments made by CLRG will not be binding on the disciplinary panel which will comprise independent persons who will have to start afresh in considering the complaint made against the plaintiff.

119. The proposed introduction of new disciplinary procedures is stated to be necessary to provide for enhanced protections for persons against whom allegations have been made. The retrospective application of new rules may, in due course, be relied upon by the plaintiff if she is unhappy with the outcome of the disciplinary process. However, I do not believe that, of itself, the fact of introducing these new rules necessarily invalidates the disciplinary process at this stage. If the plaintiff is disadvantaged in any respect by the new rules then she may well have a valid basis to complain about any decision made on foot of them. However, there was no evidence before the court that these proposed new procedures would disadvantage the plaintiff or impose a greater onus or obligation on the plaintiff than the current rules and procedures do. The plaintiff's complaint in relation to the changed procedures was their retrospective introduction, rather than their content. I accept that the circumstances of the complaints advanced against multiple parties in 2022 created a serious challenge for CLRG in respect of its disciplinary procedures. It appears sensible in all the circumstances, particularly the myriad of relationships across the organisation, that efforts would be made to find independent parties to conduct both the preliminary investigation and the disciplinary process itself.

120. This does not mean that the situation cannot change depending on how the process continues. Nor does it mean that the plaintiff cannot later complain of an absence of fair procedures in the process that actually takes place.

121. The disciplinary committee will be entirely at large to come to its own conclusions. I am therefore satisfied that the proper course is for the disciplinary process before the committee to proceed and continue to conclusion. I believe the application to suspend the disciplinary hearing is premature and that the plaintiff's rights can be fully respected and protected by the disciplinary committee. Of course, the plaintiff will be free to challenge decisions that are actually made if there is any want of fairness or natural justice afforded to her by that committee in due course.

122. There is an imperative on CLRG to advance the disciplinary process with a degree of haste from this point onwards. Their failure to do so may give rise to real prejudice at a future point which the plaintiff would be entitled to complain of.

123. In all the circumstances I refuse the interlocutory relief seeking to dismiss the continuation of the disciplinary process.

Conclusion

124. For the reasons set out in detail in this judgment, I grant interlocutory relief to the plaintiff restraining the defendant from suspending her, whether pursuant to clause 3.2.2(b) of the defendant's disciplinary procedures, or otherwise, until the determination of these proceedings or the publication of the findings of the disciplinary hearing, whichever is sooner.

125. For the reasons set out in detail in this judgment, I refuse the plaintiff's request for interlocutory relief restraining the defendant from conducting a disciplinary hearing. I

deem such request premature at this point and direct that the disciplinary hearing should progress as soon as possible.

126. I will hear the parties in relation to costs and any related orders necessitated by this judgment and will list this matter for mention for that purpose at 10:30 am on Wednesday 8 March 2023, or as may otherwise suit the parties.