

THE HIGH COURT

[2015 No. 5504 P]

BETWEEN

HELEN EARLEY

PLAINTIFF / APPLICANT

AND

THE HEALTH SERVICE EXECUTIVE

DEFENDANT / RESPONDENT

JUDGMENT of Mr. Justice O'Connor delivered on Friday the 27th day of November, 2015**Background**

1. The plenary hearing of this case ran over nine days during the period from the 10th November, 2015, to the 24th November, 2015. The proceedings had been case-managed in order to achieve an early determination in view of the effects of the granting or refusal of the reliefs sought as urged upon the Court by counsel from the time when both parties were first represented in court at the beginning of July, 2015.

2. The Court alluded to its concern in the first week of the trial as to the time and resources that were devoted to this litigation. A considerable number of working hours of the defendant's staff were taken up with this litigation and the plaintiff herself attended throughout the trial. Furthermore, much time must also have been spent on preparing for the various hearings from July, 2015 to date.

3. The Court shared the desire of the parties for delivery of an early judgment. In this judgment the Court concentrates on the submissions most pertinent to its decision. The Court refers in a general way to the evidence adduced and the legal issues which have been raised that are ultimately relevant to the reliefs sought.

Informing Events

4. The following are facts which cause the Court to deliver its judgment in early course and which contribute to its final decision in relation to the reliefs sought:-

1. The Mental Health Commission ("MHC"), as long ago as the 22nd April, 2015, most unusually contacted Ms. Anne O'Connor, national director for the mental health services of the defendant, on an urgent basis, as opposed to anyone in the relevant local area mental health management of the defendant for the Roscommon area. In a subsequent teleconference call with Ms. O'Connor and four other high ranking members of the defendant, the MHC described its very serious concerns following an inspection on the 16th April about the welfare of some service users in Roscommon and the local management's response to welfare issues and incidents. The MHC is effectively a regulator and supervisor of the defendant in regard to the provision of mental health services;

2. The letter from the Nursing and Midwifery Board of Ireland ("NMBI") to the director general of the defendant on the 8th May, 2015, about its notification to An Garda Síochána pursuant to the Criminal Justice (Withholding of Information on Offences Against Children and Vulnerable Persons) Act 2012, which begged the question about the failure of the defendant's local management to notify An Garda Síochána about allegations relating to service users in a facility of the defendant;

3. The reasoned, *bona fide* and honestly held opinion of Mr. Gloster (whose evidence will be described later) which he formed on the 21st May, 2015, that the mental health services in Roscommon, which incorporated a number of residential units (two named units in particular), required a special review to provide the assurance expected by the defendant and the MHC. In other words, questions had arisen about whether established procedures and reporting policies of the defendant concerning service users, facilities and the provision of mental health services were operating as envisaged by the defendant in the Roscommon area;

4. The meeting on the 15th June, 2015, between representatives of the defendant and the MHC focusing on Roscommon lead to the decision to have an external review. The MHC had specifically reserved its right to initiate its own review under s.55 of the Mental Act 2001 ("MHA"). The evidence to the Court was that s.55 reviews had only been sought on two previous occasions and the reference to a possibility of such a review underscored the grave concern of the MHC;

5. The voluntary, albeit "under protest", reassignment of Ms. Catherine Cunningham (the plaintiff's line manager at this time) while a systems analysis, independent review and screening of anonymous complaints were undertaken. The Court stresses that the reassignment of Ms. Cunningham did not occur as a result of any allegation of wrongdoing made by the defendant against Ms. Cunningham;

6. The understanding afforded to the plaintiff by Ms. Cunningham around the 21st May, 2015, when her temporary reassignment was first suggested to her by Ms. Cunningham. Ms. Cunningham had agreed to discuss this with the plaintiff during her earlier meeting with Mr. Gloster and Dr. Burke (executive clinical director). Similar care, patience and understanding was given by Mr. Gloster to the plaintiff through her then union representative on the 24th June, 2015, and later by Mr. Gloster to the plaintiff up to and after his communication of the decision on the 1st July, 2015 (the subject of the plaintiff's claim);

The following description of events up to the remark which the Court feels obliged to make is only relevant to the granting of reliefs if the plaintiff established that the decision communicated on the 1st July was unlawful:-

7. The plaintiff's disregard, if not defiance, of the directions of Mr. Gloster whose authority to issue directions on the 1st July, 2015, were not challenged by the plaintiff. This is further evidence of the state of the working relationships in the

relevant area. There was no excuse for such disregard despite the plaintiff's mantra that she was denied "natural justice" in the making of the decision to reassign her which she attributed to alleged incidents of a sexual nature. The resistance of the plaintiff was ratcheted up even more when her solicitor entered the scene by emailing a six page letter at 15:44 on Saturday the 4th July to Mr. Gloster. Mr. Gloster in his evidence made little of the effort which he undertook in preparing a three page email reply which he sent to the solicitors at 10:58 on Sunday, 5th July. In this email Mr. Gloster summarised the prior relevant communications and spelt out in a remarkably moderate tone the consequences of the plaintiff's proposed defiance. The plaintiff was coy in her evidence about her knowledge of the evolving situation and the consequences of her defiance. Bluntly put, the plaintiff was exerting pressure in an inappropriate manner to get her own way and she paid little regard to the effect on her colleagues and the team of which she had been part for many years, whatever about the effect on the vulnerable service users. She was effectively jeopardising the provision of mental health services in order to thwart what she feared was going to be a permanent reassignment without her perceived right to due process;

8. Mr. Brian O'Malley started as acting area director of nursing mental health services on Monday, 8th July while the plaintiff was temporarily reassigned which she consciously ignored without any authority. Good governance and appreciation of management responsibilities clearly dictate that the plaintiff ought to have abided by the directions of Mr. Gloster. Nothing which the Court heard, excuses the plaintiff from the position which she took at that time and right up to and including the date of the hearing of the interlocutory application at the end of July, 2015;

9. The failure of the plaintiff to mend her hand following a reading of the perfected order of Gilligan J. on Friday 10th July, 2015, which specifically stated that no injunction was granted at that stage restraining the defendant from reassigning the plaintiff;

10. The situation whereby the Court granted an interlocutory injunction on the 30th July, 2015, having been informed by way of affidavit sworn on the 8th July, 2015, that the plaintiff had continued to carry out her full range of duties as director of nursing since the 1st July. This assertion was not corrected or clarified by or on behalf of the plaintiff until she answered questions under cross examination in the first week of the trial that she actually confined herself to clerical duties and photocopying at that time. The plaintiff remained out of contact with Mr. Gloster despite attempts by and on behalf of Mr. Gloster. This caused concern to Mr. Gloster about her personal well being. She or her solicitor should have given assurances at the earliest opportunity. The plaintiff did not seek to offer any credible excuse for this conduct;

11. REMARK: The Court feels obliged to remark that an area director of nursing who thinks and instructs her solicitor that she has carried out her full range of duties during the days following in such circumstances shows a lack of objectivity at that time, at the very least. By all accounts, the plaintiff had an unblemished record as a nurse and a director of nursing and it is worrying to note how the plaintiff has risked all of that good record by the tactics which she has adopted since the beginning of July, 2015. No matter how one may sympathise with the plaintiff about her subjective perception of what people might say following her temporary reassignment, it is quite apparent that the plaintiff became so consumed with asserting her rights that she ignored her own responsibility for good governance and management. On this aspect, the learned judge who heard the interlocutory application at the end of July on foot of affidavit evidence only, expressed a belief in her written judgment that there was a good working relationship within management. This Court, having heard the evidence as tested under cross examination, concludes that there could not have been good working relationships at that time or leading up to that time in 2015;

12. Mr. Little in his email of the 1st September, 2015, to Ms. Cunningham's replacement in the mental health service area (Mr. John Meehan) stated that **none** of the individuals (including the plaintiff) named in anonymous letters, which understandably concern the plaintiff, "have a *prima facie* complaint of a 'disciplinary, dignity at work or trust in care nature to answer'" (emphasis added). This email is mentioned as a result of the submission made on behalf of the plaintiff that she should have the benefit of the defendant's Trust in Care policy. The first reference to Trust in Care occurred in the letter from the plaintiff's solicitor to the defendant of the 7th July, a full week after the communication of the decision to reassign the plaintiff and a day after Mr. O'Malley took up his role as the acting area director of nursing;

13. The MHC, in its seventeen page report published in the middle of September, 2015 that arose from its earlier inspections of a particular facility in Roscommon providing mental health services, concluded, *inter alia*, that many corrective actions had not been implemented some eight weeks after the MHC's first expression of concerns in April, 2015;

14. The interim report of the external "review of the quality, safety and governance of services within the Roscommon area" dated the 22nd October, 2015, referred to themes emerging and mentioned "poor implementation of governance arrangements and major relationship difficulties at most levels within the organisation," before expressing the review group's increasing concern "that Mental Health Services for the people of Roscommon are dysfunctional and carry unnecessary risk" (emphasis added).

Observation

5. While it is indeed the constitutional right of parties to litigate their disputes, this Court takes the opportunity to exhort all professionals in the future to recognise that the most vulnerable in society, such as those who require mental health services, have rights which they as professionals and the courts ought not allow to be affected by the litigation process if at all possible. Litigation consumes valuable time and will usually divert the attention and available time of professionals from their vocation and their proper guiding principles.

Introduction to the plaintiff's claim

6. The plaintiff in these proceedings seeks a declaration that the decision of the defendant, as communicated to her by letter dated Wednesday 1st July, 2015, is unlawful. As and from the following Monday 6th July, 2015, the plaintiff was temporarily reassigned from area director of nursing in the Galway/Roscommon mental health service to area director of nursing in a specialised capacity to the programme management office of the national mental health division of the defendant as a result of that letter. All of the terms of employment for the plaintiff remained the same. The only change identified by the plaintiff in evidence was that she was not going to have an operational role as a result of the reassignment. The reassigned role for the plaintiff was of equivalent grade status and level of remuneration to her previous position. Furthermore, the plaintiff was able to discharge this new role from her existing office with the support of her secretary in that office and without disruption to her daily routines. In summary the plaintiff was not required by reason of the reassignment to do a fundamentally different job.

Relief Sought

7. Counsel for the plaintiff explained that the primary relief sought was a declaration that the decision to reassign was unlawful, and that the Court could adopt the approach of Laffoy J. in *McNamara v. Health Service Executive* [2009] IEHC 418 where the learned judge expressed confidence that the defendant as a statutory body would act in accordance with the declaration granted. Whatever way one considers the reliefs sought by the plaintiff, there is no doubting that the plaintiff seeks that the defendant leave her for the time being as area director of nursing Galway/Roscommon mental health services which she held from December, 2002 to 1st July, 2015, and from 30th July, 2015, (as a result of the interlocutory injunction granted in these proceedings) to date. The plaintiff acknowledged in answer to a question from the Court that she could be moved in a reorganisation. The plaintiff's focus at all times has been on her perception of what other people may think as a result of the temporary reassignment.

Written employment terms

8. The plaintiff's "contract of indefinite duration (permanent)" dated 7th December, 2002, provided the following terms relevant to issues for consideration by the Court:-

1. **Title:** "You are employed as Area Director of Nursing, Mental Health Service, Galway and Roscommon Mental Health."
4. **Location:** "You will be employed in Galway and Roscommon Mental Health Services. Your initial assignment will be to Galway and Roscommon Mental Health Services. You may be required to work in any service area within the vicinity as the need arises."
5. **Reporting Relationship:** "You will report to the area manager or other nominated manager."
6. **Duties:** "The main duties of your position are set out in the job specification already supplied. In addition to your normal duties, you may be required to undertake other duties appropriate to your position as may be assigned to you, including deputising as appropriate..."
16. **Grievance Procedure:** "You have the right to seek redress in respect of any aspect of your terms and conditions of employment under the HSE Western Area's Grievance Procedure, copy of which is attached. Should you have a grievance you should follow this procedure..."
25. **Agreement:** "Your terms and conditions may be revised in accordance with agreements reached between the union representing your grade and the HSE Western Area."

Job specification

9. The five page job specification for the plaintiff referred to the job title and grade of area director of nursing. It identified the plaintiff as a member of the multi-disciplinary management team preparing a local "vision for change implementation" for the area and included a particular section concerning "quality assurance", before finishing with the sentence: "the above job description is not intended to be a comprehensive list of all duties involved and consequently, the post holder may be required to perform other duties as appropriate to the post which may be assigned to him/her from time to time and contribute to the development of the post while in office."

Background to plaintiff's grievance

10. The plaintiff has contended that the reassignment was motivated to appease the Psychiatric Nurses Association ("the trade union"), whose spokesperson had wrongfully advocated that the plaintiff should be taken out of her post along with others in management. The plaintiff was indeed the victim of a campaign to denigrate her and others while seeking to attribute operational decisions relating to the closure of a unit to those same people which the trade union vigorously opposed.

11. The plaintiff remains adamant that her professional reputation and status within the defendant organisation were damaged by orchestrated anonymous complaints which ought to have been screened at a much earlier date. She believes that she will be further damaged by the temporary reassignment as it will tend to link her to the allegations of alleged cover-up of sex abuse in facilities provided by the defendant.

12. The evidence indicated that serious allegations have been made about cover-ups of an attack of a sexual nature in a unit managed by the defendant and a lot of court time was spent with hearing and interpreting details of those allegations which were contained in a substantial amount of documentation opened during the trial.

13. It is indeed the case that the plaintiff's reassignment with effect from the 6th July, together with the earlier voluntary reassignment of her line manager, occurred before anonymous complaints including a protected disclosure had been screened. The Court notes that Mr. Little, who was furnished with a copy of the anonymous complaints and the protected disclosure to investigate, emailed his confirmation on the 1st September, 2015, to the defendant that there was not a "prima facie complaint of a disciplinary, dignity at work or Trust in Care nature to answer at this time".

Condition of service

14. Counsel for the plaintiff urged the Court to follow in particular the view of Kelly J. in *Rafferty v. Bus Eireann* [1997] 2 I.R. 424 where he said that "at common law an employee is not required to do a fundamentally different job from that contracted for".

15. The Court has already mentioned that the reassignment of the plaintiff did not constitute a fundamentally different job. By way of explanation for that finding, the Court observes that the plaintiff was temporarily moved to a position of clinical lead in the programme management office which is the office that is driving reform of mental health services in this country. As counsel for the defendant mentioned, the plaintiff was not assigned to administering the catering in a hospital or to carrying out some duties that were unrelated to the plaintiff's qualifications, experience or status. In fact, none of the witnesses expressed a view that the temporary reassignment was in any way inferior and Mr. Gloster expressed the belief that it offered some degree of prestige.

16. There is no need to give an excursus of what is or is not a condition of service as the effect of clauses 4 and 6 in particular of the plaintiff's contract obliges the plaintiff to work "in any service area". Furthermore she is required to "undertake duties appropriate to [her] position". Clause 1 of the contract refers to a title which could be changed in any re-organisation if she was promoted or moved as indeed the plaintiff acknowledged could be the case and will probably be the case with a reorganisation due next year.

17. Despite the eloquent submissions, this Court cannot construe the terms of the contract such that the plaintiff has a contractual

right to preserve some right to remain as area director of nursing until she otherwise agrees. The reference to revising terms and conditions in clause 25 of her contract in accordance with trade unions representing her grade and "the HSE Western Area" copper-fastens the Court's view that the Plaintiff had a contractual right to a grade which could only be altered by agreement. Neither the plaintiff nor a union representing her grade could veto a temporary reassignment as a result of the written contract between the parties.

Trust in Care policy

18. In May, 2005 the Trust in Care policy for health service employers on upholding the dignity and welfare of patients/clients and the procedure for managing allegations of abuse against staff members was published. It was submitted on behalf of the plaintiff that this policy should have been applied to her before her reassignment as anonymous allegations of cover up of abuse had been made involving the plaintiff and others. The plaintiff's solicitor was the first to mention that the reassignment which had actually taken place was not in compliance with the trust in care policy for managing allegations of abuse against staff members. The fact that the defendant does not make any allegation of cover up against the plaintiff leads the Court to the conclusion that the Trust in Care policy does not apply. Even if the Court is wrong in that respect two further factors persuade the Court that it need not concern itself with the plaintiff's late reliance on this policy:-

a. Mr. Little, who was asked to screen the anonymous allegations and a protected disclosure, found after the date of temporary reassignment that there was no prima facie complaint against the plaintiff;

b. Section 5.2 of the Trust in Care policy makes provision for putting a staff member off-duty with pay pending the outcome of an investigation, and this is not the situation in the plaintiff's case. The policy recognises that management should take whatever protective measures are necessary to ensure that no patient/client or staff member is exposed to an unacceptable risk from a person who stands accused.

Natural Justice

19. The plaintiff repeated on many occasions in her evidence at trial that she was deprived of natural justice. The plaintiff was neither dismissed nor suspended and no investigation concerning her professional competence or ability to perform duties has been commenced or pursued. The exchanges between the plaintiff and Ms. Cunningham, her line manager, and subsequently with Mr. Gloster afforded the plaintiff an opportunity to have an input into the reassignment. Rather than engage with Ms. Cunningham or Mr. Gloster in a positive way, the plaintiff went on the offensive and added the Trust in Care policy to her call for natural justice when challenging the decision to reassign her temporarily.

20. Even if the Court is in some way wrong about referencing the availability of an opportunity to engage positively, the judgment of Kearns. P of 19th September, 2014, in *McEneaney v. Cavan and Monaghan Education and Training Board* [2014] IEHC 423, which relied on his earlier decision in *Morgan v. Trinity College* [2003] 3 I.R. 157, supports the submission made on behalf of the defendant that the defendant does not have to afford the panoply of procedures which may be given to employees for disciplinary or suspension processes. Each of the cases cited by the parties in support of their arguments that some form of natural justice should be given or should not be given to the plaintiff concerned suspensions or dismissals. It will be an extraordinary state of affairs if an employer when requiring employees to do a similar job on a temporary basis must have a form of process akin to a disciplinary or suspending process. In the absence of a written term in a contract which has a set process for reassignments the Court will not imply such a term.

Grievance procedure

21. The plaintiff does not have an obligation to seek redress under the grievance procedure as provided for in para.16 of her contract of employment. Nevertheless the constant refrain of the plaintiff that she has been deprived of natural justice does not sit easily with her decision not to engage with the defendant under the grievance procedure. Seeking redress from this Court for her sense of grievance is far more cumbersome than pursuing the grievance procedure. The plaintiff was the only witness who expressed cynicism about the grievance process.

Opportunity to engage

22. The Court is bewildered by the plaintiff's refusal to have engaged positively with Ms. Cunningham or Mr. Gloster when the issue of reassignment arose. The Court understands the plaintiff's argument that if she was suspended or dismissed for wrongdoing that she could have had the benefit of the Trust in Care policy. The Court emphasises again that the plaintiff has not been accused of wrongdoing and is not the subject of a disciplinary process.

"Valley of the squinting windows"

23. The plaintiff formed her own view that the temporary reassignment was a sleight on her reputation and that it arose from a campaign of defamation together with improper action by the trade union which had targeted her and others. Counsel for the plaintiff engaged with the Court's questions about the perceptions which the plaintiff only mentioned. Counsel referred the Court to the "valley of the squinting windows" as mentioned by Hogan J. in *Wallace v. Irish Aviation Authority*. The Court is not persuaded that the plaintiff's temporary reassignment has had or will have had the effect which she fears. Hogan J. was dealing with a case where the claimant had been placed on administrative leave with full pay pending the outcome of a disciplinary hearing. It is also noteworthy that Hogan J. was determining an application for an interlocutory injunction which was heard by way of affidavit evidence. None of the witnesses gave evidence at this trial to the effect that the plaintiff's reputation had been undermined in their eyes as a result of the reassignment. The plaintiff referred to the campaign of the trade union and understandably questioned the motivation of the author of many of the communications which described the allegations in an anonymous way. The Court is not asked in these proceedings to determine the effect on the plaintiff's reputation as a result of that campaign or of those allegations. The Court might only be concerned with the effect on the plaintiff's status as a result of the decision communicated to the plaintiff by Mr. Gloster on the 1st July, 2015. The Court finds that the plaintiff appears rather precious and melodramatic about the effect on her status as a result of the impugned decision. In short, the plaintiff has failed to establish loss of reputation or status due to the reassignment decision.

Mr. Gloster

24. Mr. Gloster, who is now one of nine chief officers of the defendant, was interim chief officer for Galway/Mayo/Roscommon area from the 12th January, 2015 to the 21st September, 2015.

25. Having listened to Mr. Gloster over two days, which included a rigorous cross examination during which the basis of his decision, as communicated to the plaintiff on the 1st July was explored in great detail, the Court can describe Mr. Gloster as a patient, committed and dedicated public servant. There was no hesitation in Mr. Gloster's evidence and the Court appreciated his candour. He

agreed with succinct questions put by senior counsel including the following:-

1. The plaintiff has no *prima facie* case to answer in relation to the anonymous complaints made to the defendant including those related to the very sexualised behaviour of a service user;
2. The defendant did not believe at any stage and does not believe that the Trust in Care policy applied to the reassignment of the plaintiff on a temporary basis;
3. The reassignment was made without the plaintiff's agreement;
4. The reassignment was described as a protective measure;
5. The plaintiff was reassigned from a clinical role to a non operational role;
6. The decision was made in the context of patient safety concerns;
7. The decision was made without prejudice to the plaintiff's rights;
8. No judgement had been made of the professional ability of the plaintiff;
9. The decision was made pending the undertaking of various enquiries and processes;
10. The processes were expected to take approximately six to nine months;
11. The reassignment would not affect the plaintiff's physical location of her work or her remuneration.

26. The last few years have been a turbulent and demanding time for the defendant, its staff and its service users. Mr. Gloster impressed the Court with his intelligent and careful way of describing change, understanding the importance of professional reputations and being firm with those (including unions and staff) who act unlawfully. Implementing policy decisions such as those set out in "A Vision for Change" while retaining the primary focus of the defendant on the service users has remained a significant challenge for the defendant and its staff.

27. Returning to the decision to temporarily reassign the plaintiff, Mr. Gloster was cross examined with the suggestion that he actually temporarily reassigned the plaintiff on account of the allegations of cover up. Mr Gloster answered all of the questions with understanding. He dispelled any idea that he was motivated in making his decision to appease the trade union or to rid the defendant of the publicity caused by the anonymous complaints. In fact Mr. Gloster was most supportive of the plaintiff and her line manager as were other senior members of the defendant against organised attempts to thwart and discredit the reorganisation and closures required to implement the defendant's policy. Mr. Gloster handled the concerns of the MHC, members of the public, staff, unions and the external review group in a professional way. There is no doubting Mr. Gloster's commitment to the primary focus of the defendant on the provision of mental health services to users in a safe and protected environment.

History

28. Mr. Gloster explained to the Court that in February, 2015 two specific items of concern were relayed to him by Ms. Catherine Cunningham (the then area manager) and Dr. Amanda Burke (executive clinical director) in relation to the provision of mental health services in the Roscommon area. The question about the very sexualised behaviour of a service user in a Roscommon facility also came to his attention around mid-April, 2015. This culminated in the defendant after discussions with the MHC requiring assurances. The Court, as already mentioned, heard minute details of incidents and the concerns expressed by both the MHC and the NMBI. Mr. Gloster was prompted to conclude that proposed actions which had agreed to be undertaken had not actually taken place.

29. Beyond this time a wider concern was also emerging about a member of the medical staff which fed into Mr. Gloster's meeting on 21st May, 2015, with Dr. Burke and Ms. Cunningham. The Court has rightly been given limited details of difficulties caused by or for a member of the medical staff. It is not aware in case it is inferred of any disciplinary process concerning any member of the medical staff.

30. Suffice to say that on the 21st May, 2015, Mr. Gloster formed two opinions:-

1. there were a number of local actions required to manage and monitor the actions agreed to have been undertaken;
2. apart from dealing with the incidents there were serious issues to be explored in relation to the Roscommon Mental Health Service and more particularly governance and culture.

31. Mr. Gloster understandably formed the view that an overall review of the Roscommon mental health services was required and particularly in view of the increasing questions about the absence of assurances at a systemic level.

32. Although it was not specifically put to Mr. Gloster on behalf of the plaintiff, that he made his decision to temporarily reassign the plaintiff other than to create space for the reviews and analysis, it is clear that the plaintiff attributes bad faith to the making of the decision. The Court does not find any such bad faith.

33. The Court does not accept that Mr. Gloster should have given more details of his reasons to reassign the plaintiff temporarily. Management reviews such as that undertaken here need space as explained in evidence.

34. The plaintiff never really disputed the description that the mental health services in Roscommon were in a state of crisis. Counsel for the plaintiff in closing submissions suggested to the Court that it should have limited reliance on the views of Mr. Gloster as he left at the end of September, 2015 and he was relying on an interim report of the external review to give his opinion of the situation now. The Court does not favour this submission in any way as Mr. Gloster gave his opinion from the defendant's perspective and having available to him information that is fed into reporting within the defendant. None of the questions posed during the trial and none of the evidence of the plaintiff or of Dr. Byrne persuaded the Court to conclude other than that the services are in a crisis situation.

Ms. O'Connor

35. Ms. O'Connor, who is the defendant's national director for mental health services, corroborated Mr. Gloster's account of how the decision to establish an independent review came about. Ms. O'Connor's evidence was forthright and clear. There was no form of

conspiracy to oust the plaintiff or attempt to appease the trade union when the decision was made and implemented.

36. An issue was raised by counsel for the plaintiff before the case ended about the effect of an answer by Ms. O'Connor to the Court in regard to what was meant by a protected measure. The Court understood both Mr. Gloster and Ms. O'Connor to say that a protected measure has, as its principal focus, the protection of service users while at the same time creating a space for staff members to allow reviews or whatever to occur. Nothing really turns on the meaning of a protected measure, as the Court is clear that the establishment of the external review together with the reassignments during the review period were undertaken in the best interests of the service users ultimately. Ms. O'Connor did not, in any way, assist the suggestion made on behalf of the plaintiff that the decision to reassign was made in bad faith and without regard to the plaintiff's right to vindicate her good name.

Ms. Cunningham

37. Ms. Cunningham, who was called to give evidence by counsel for the plaintiff, did not state that either she or the plaintiff was asked to go to another position temporarily in order to appease the union, another staff member or by an unlawful manner. Ms. Cunningham agreed to a voluntary reassignment, although she has adopted the grievance procedure as opposed to the court process in regard to that decision. She is entitled and right to proceed in that way.

Dr. Byrne

38. Dr. Byrne came to court at a time when he was on leave for stress and which he may attribute to the working relations within the relevant areas. Dr. Byrne was as candid as he could be about the background to a number of incidents that were the subject of anonymous complaints. Notably Dr. Byrne did not agree that the provision of mental health services in Roscommon was in crisis. The Court can only attribute Dr. Byrne's difference of opinion to his absence from the work area and as a result of his previous limited attendance at the facilities with which the MHC was concerned.

Summary of challenge to decision

39. In summary, despite the rigorous cross examination of both Mr. Gloster and Ms. O'Connor, no bad faith, conspiracy or failure to recognise the rights of the plaintiff has been established. The particular union officer who threatened the plaintiff's position and prospects has been told in no uncertain terms by the defendant that the defendant will not tolerate any such activity. Moreover, the Court accepts that the appeasement of that union or its members did not motivate Mr. Gloster's decision of 1st July, 2015. The decision communicated to the plaintiff on 1st July, 2015, was not made with a view to investigating the plaintiff's conduct or to starting disciplinary proceedings against the plaintiff personally. The decisions to initiate a national review and screening of the anonymous complaints were made by the defendant, and it was considered prudent to reassign the plaintiff while those processes were ongoing. There was and is no obligation on Mr. Gloster to justify his decision other than in the way that he did.

Reliefs Sought

40. The plaintiff as previously stated has sought reliefs which in the words of Laffoy J. are "tantamount to specific performance of an employment contract". If the Court is wrong in its interpretation of the contract, its decision concerning the lawfulness of the impugned decision or the claim by the plaintiff that she has been denied constitutional or natural justice, the Court feels obliged to mention the following matters which would be considered by the Court if it came to determining the reliefs:-

- (i) The defiance of the plaintiff as explained earlier in this judgment;
- (ii) The unchallenged evidence of Mr. Gloster that the health service requires flexibility and requires the ability to reassign staff;
- (iii) The fact that the plaintiff raises an entirely novel point of law, namely that an employer like the defendant may be obliged by this Court to organise the provision of services in a manner which is contrary to the employer's decision to review and change in view of a crisis;
- (iv) The plaintiff made the case at the interlocutory injunction hearing and at trial that nothing but her reinstatement without a temporary reassignment will be an adequate remedy;
- (v) The Court cannot and ought not to supervise employment contracts.

41. In those circumstances, the Court refuses to grant a declaration in the terms sought as the purpose of the declaration is unclear while granting a declaration risks the exacerbation of the crisis and the management assurance problems.

42. The plaintiff's claims are therefore dismissed.