

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL

CITATION: *Acreman v Deputy Commissioner Brett Pointing* [2019]
QCAT 95

PARTIES: **GEOFFREY OWEN ACREMAN**
(applicant)
v
DEPUTY COMMISSIONER BRETT POINTING
(respondent)

APPLICATION NO/S: OCR294-17

MATTER TYPE: Occupational regulation matters

DELIVERED ON: 11 April 2019

HEARING DATE: On the papers

HEARD AT: Brisbane

DECISION OF: Member Browne

ORDERS: **IT IS THE DECISION OF THE TRIBUNAL THAT:**

- 1. Geoffrey Owen Acreman is granted leave to rely on the following fresh evidence:**
 - (a) Affidavit of Patrick Michael Quinn sworn 22 October 2018; and**
 - (b) Affidavit of Anthony Fleming sworn 19 October 2018.**
- 2. The decision of Deputy Commissioner Brett Pointing made on 14 December 2017 in relation to sanction concerning matter three is set aside and the following decision is substituted:**
 - (a) Geoffrey Owen Acreman is reduced from Inspector pay point 5.6 to Senior Sergeant pay point 4.1 for a period of twelve (12) months from 14 December 2017;**
 - (b) At the conclusion of the twelve (12) month period, Geoffrey Owen Acreman shall return to Inspector pay level 5.6;**
 - (c) Within two (2) months of the date of this order Geoffrey Owen Acreman must complete the following:**
 - (i) Ethics and ethical decision-making online training (QC1022_02_A);**

- (ii) **Information Security Online Tutorial (QC0241_03);**
- (iii) **Information Classifications Systems Online Training (QC0451_03); and**
- (iv) **Professional Practice within the QPS Online Training (QC1022_04).**

(d) Within eight (8) months from the date of this order Geoffrey Owen Acreman must complete external self-funded ethics and governance training through a registered training organisation.

CATCHWORDS:

ADMINISTRATIVE LAW – ADMINISTRATIVE TRIBUNALS – POLICE – DISCIPLINE AND DISMISSAL FOR MISCONDUCT – QUEENSLAND – where the applicant police officer was involved in an off-duty incident – where two allegations presented concerning accessing official and confidential information contained within the Queensland Police Service computer system – where sanction imposed – where police officer demoted in rank and pay point – where application to review the finding of misconduct and the sanction imposed – where the allegations of misconduct were found to be substantiated by the Tribunal on review – whether sanction imposed is the correct preferable decision

Crime and Corruption Act 2001 (Qld), s 219BA, s 219H, Schedule 2

Police Service Administration Act 1990 (Qld), s 1.4.

Police Service (Discipline) Regulations 1990 (Qld), s 3

Queensland Civil and Administrative Tribunal Act 2009 (Qld), s 17, s 20, s 66

Aldrich v Ross [2010] 2 Qd R 235

R v Bowen (1995) 2 Qd R 8

Crime and Corruption Commission v Acting Deputy Commissioner Barron and Anor [2015] QCAT 96.

Comptom v Deputy Commissioner Ian Stewart Queensland Police Service [2010] QCAT 384

DA v Deputy Commissioner Stewart [2011] QCATA 359

Deputy Commissioner Stewart v Dark [2012] QCA 228

Hardcastle v Commissioner of Police (1984) 53 ALR 593

Murray v Deputy Commissioner Stewart [2011] QCAT 583

R v Police Appeals Tribunal [2016] EWCH 22708

Police Service Board v Morris (1985) 156 CLR 397

Queensland Police Service v Comptom (No 2) [2011] QCATA 246

REPRESENTATION:

Applicant: T E Schmidt instructed by Gilshenan & Luton Legal Practice

Respondent: C J Capper of the Queensland Police Service Legal Unit

APPEARANCES: This matter was heard and determined on the papers pursuant to s32 of the *Queensland Civil and Administrative Tribunal Act 2009* (Qld).

REASONS FOR DECISION

- [1] Geoffrey Owen Acreman was demoted from Inspector pay point 5.6 to Senior Sergeant pay point 4.1 following findings of misconduct made by Deputy Commissioner Brett Pointing.¹
- [2] Mr Acreman sought a review of the respondent's decision in relation to the findings of two matters of misconduct and the sanction imposed.² Following a hearing, I found the allegations contained in matters two and three to be substantiated.³ I confirmed the respondent's decision to impose a sanction of reprimand for matter two. I invited the parties to file further submissions in relation to the appropriateness of any sanction to be imposed for matter three.⁴
- [3] The Tribunal has received written submissions from the parties addressing the issue of sanction for matter three and the availability of any suitable courses or training that Mr Acreman can complete.⁵
- [4] Mr Acreman has also filed an application to rely on fresh evidence on the basis that the further evidence will assist the Tribunal in determining whether it is suitable for Mr Acreman to complete training and/or courses.⁶ I am satisfied that both parties have had an opportunity to file submissions about the issue of sanction; and whether Mr Acreman should be granted leave to rely on the fresh evidence s.⁷ The matter is now listed before me to determine the appropriateness of any sanction to be imposed having found matter three to be substantiated.⁸
- [5] Turning firstly to the fresh evidence, the respondent has filed no submissions in response to Mr Acreman's application to rely on fresh evidence and more importantly the written submissions filed by Mr Acreman in support of his application.

¹ Notice of formal finding of misconduct dated 14 December 2017.

² Application to review filed 20 December 2017.

³ *Acreman v Deputy Commissioner Brett Pointing* [2018] QCAT 321 ('Reasons').

⁴ Decision and directions dated 20 September 2018.

⁵ Respondent's outline of submissions as to sanction filed 8 October 2018 ('Respondent's submissions') and see applicant's outline of submissions on sanction filed 22 October 2018 ('applicant's submissions').

⁶ Application for miscellaneous matters filed 22 October 2018 and submissions filed in support on 22 October 2018.

⁷ Directions dated 26 October 2019.

⁸ Hearing on the papers listed before the Tribunal on 13 February 2019.

- [6] I accept Mr Acreman's submission that the fresh evidence is relevant to the determination of sanction and that it would be unfair not to allow Mr Acreman to rely on the fresh evidence.⁹ The fresh evidence sought to be adduced by Mr Acreman consists of two affidavits: an affidavit prepared by Mr Acreman's solicitor, Patrick Quinn, who deposes to, amongst other things, the availability of relevant training for Mr Acreman to complete; and an affidavit prepared by Anthony Fleming, Mr Acreman's supervisor, who deposes to Mr Acreman's good conduct and his duties as a police officer since November 2015 when he was stand down and removed from his position in the Crime and corruption Commission ('CCC'). I am satisfied that the fresh evidence may assist the Tribunal in determining the appropriateness of the sanction to be imposed in discharging its statutory function to arrive at the correct and preferable decision. Leave to rely on the fresh evidence is granted.

Background

- [7] Mr Acreman commenced his career with the Queensland Police Service ('QPS') in 1981 and rose to the rank of Inspector. At the time of the incident, giving rise to the disciplinary proceedings, Mr Acreman had a distinguished and unblemished record as a serving police officer and held a position at the CCC that commenced in 2013.¹⁰
- [8] The incident giving rise to matter two in the disciplinary proceedings took place in 2015 and involved an off duty incident between Mr Acreman and a member of the public. Matter three took place in 2016 and involved Mr Acreman accessing official and confidential information held within the QPS computer system. Mr Acreman accessed the information without an official purpose including opening a folder that contained four files. Without authority, Mr Acreman forwarded the folder containing the four files to his private email address and later deleted the files from his private email address.
- [9] In determining whether the findings of misconduct for matters two and three are substantiated, I made relevant findings about Mr Acreman's conduct. In making findings, I accepted some of Mr Acreman's submissions about the allegations and his conduct. Relevantly, for matter three, I found that Mr Acreman did form an honest belief that at the time he accessed the folder containing the four documents on the QPS computer system that the four documents were accessible by anyone who had access to the QPS computer system.¹¹
- [10] Further, I found that the four documents contained within the folder that Mr Acreman accessed on the QPS computer was confidential information and at all times remained confidential, that was related to a complaint and QPS investigation about Mr Acreman.¹² I found that the information contained within the folder was not related to the performance of Mr Acreman's official duties as a police officer and that the information is 'afforded protection by QPS internal policy and the law'.¹³ I found that Mr Acreman accessed official and confidential information contained within the QPS computer system without an official purpose related to the performance of his duties as a police officer. In finding that Mr Acreman's conduct

⁹ Applicant's submission for new evidence for sanctioning filed 22 October 2028.

¹⁰ Exhibit 4, p 147.

¹¹ Reasons, [42].

¹² Ibid, [46], [50].

¹³ Ibid, [51].

is misconduct, I was satisfied that Mr Acreman's conduct was 'improper and does not meet the standard of conduct the community reasonably expects of a police officer'.¹⁴

- [11] The Tribunal, in making findings concerning the substantiation of the conduct for matters two and three, invited the parties to address the Tribunal as to the availability of any courses or other professional development training that Mr Acreman can complete to ameliorate any community concerns arising in the matter about the accessing of confidential and secure information on QPS computer systems. Both parties have identified internal and external training programs available for Mr Acreman to complete such as self-funded ethics training, information security online tutorial, information classifications systems online training, and professional practice within the QPS online training.

The Tribunal's function in reviewing the sanction

- [12] The Tribunal's function on review is to reach the correct and preferable decision on the evidence which was before the decision-maker. The material before me also includes fresh evidence, Mr Acreman having been granted leave to rely on fresh evidence in the review proceedings. It is settled law that it is appropriate to give 'considerable respect' to the views of the decision-maker as to what is needed for the 'maintenance of internal discipline'.¹⁵ The Tribunal does, however, have a duty to bring the public perspective to bear and is bound to make its own decision on the evidence before it.¹⁶
- [13] In determining, on review, the sanction to be imposed for the misconduct, it is necessary for the Tribunal to consider the purpose of disciplinary proceedings. Relevantly s 3 of the *Police Service (Discipline) Regulations 1990 (Qld)* provide that the objects of these regulations is to- (a) provide for a system of guiding, correcting, chastising and disciplining subordinate officers; and (b) ensure the appropriate standards of discipline within the QPS are maintained so as to:
- (i) to protect the public; and
 - (ii) to uphold ethical standards within the QPS; and
 - (iii) to promote and maintain public confidence in the QPS.
- [14] There is good authority that the object of disciplinary proceedings is to 'protect the public, to maintain proper standards of conduct...and to promote the reputation of that body. The object is not to punish or exact retribution'.¹⁷ The purpose of discipline is the 'maintenance of public confidence in the police force, of the self-esteem of police officers and of efficiency'.¹⁸ In *Police Service Board v Morris*¹⁹ the High Court held that:

The effectiveness of the police in protecting the community rests heavily upon the community's confidence in the integrity of the members of the police

¹⁴ Reasons, [54].

¹⁵ *Aldrich v Ross* [2001] 2 Qd R 235, 257-258 per Thomas J.

¹⁶ *Murray v Deputy Commissioner Stewart* [2011] QCAT 583 at [40].

¹⁷ *Hardcastle v Commissioner of Police* (1984) 53 ALR 593 at 597.

¹⁸ *Police Service Board v Morris* (1985) 156 CLR 397, 412.

¹⁹ *Ibid.*

force, upon their assiduous performance of duty and upon the judicious exercise of their powers. Internal discipline authority over members of the police force is a means – the primary and usual means – of ensuring that individual police officers do not jeopardize public confidence by their conduct, nor neglect the performance of their police duty, nor abuse their powers.

- [15] In arriving at the correct and preferable decision having regard to all of the material including any mitigating circumstances and the purpose of discipline, the sanction imposed must reflect the ‘the requirements of deterrence, the purpose of disciplinary proceedings, the protection of the public, the maintenance of proper standards and the necessity for community confidence in the police service’.²⁰ Further, the sanction must reflect the ‘appropriate disapproval’ of the conduct to ensure specific and general deterrence.²¹ As observed by the Appeal Tribunal in *Queensland Police Service v Comptom (No 2)*²² the Tribunal in exercising its discretion must balance all of the relevant factors including any relevant personal factors of the case ‘but do not prevail over the protective disciplinary requirements’.²³ The Appeal Tribunal held:

The sanction to be imposed in disciplinary proceedings cannot, however, be determined in an inflexible way, and disregarding individual circumstances. In the assessment of appropriate sanction, there is a discretion to be exercised in the way required by the relevant statute.²⁴

- [16] In this matter Mr Acreman seeks to set aside the sanction imposed by the respondent for matter three and substitute with a different sanction. Mr Acreman says the appropriate sanction for matter three is one of reduction in pay levels for a set period or, in the alternative, a temporary demotion for a set period. Mr Acreman says that either sanction should be coupled with a requirement to complete specific professional development training.²⁵
- [17] Mr Acreman says that the sanctioning decision must involve an act of balancing his previous good history as an officer against what is effectively a single indiscretion which occurred over what was really a matter of minutes, and in circumstances where the applicant honestly believed his privacy had been breached by the QPS leaving the documents unsecured and accessible by all employees.²⁶
- [18] The respondent submits that imposition of any sanction less than demotion to Senior Sergeant would permit Mr Acreman to retain a substantial rank and position of authority and trust as a Commissioned Officer within the QPS.
- [19] The respondent submits, amongst other things, that the sanction imposed by the decision-maker satisfies the object of maintaining appropriate standards of discipline within the QPS and maintaining the confidence of the public in the QPS.²⁷ The respondent says that Mr Acreman’s conduct particularly in the context of his rank, length of service, the position held at the relevant time and the lack of insight or

²⁰ *Queensland Police Service v Comptom (No 2)* [2011] QCATA 246, [25].

²¹ Ibid.

²² [2011] QCATA 246.

²³ Ibid, [26].

²⁴ Ibid, [28].

²⁵ Applicant’s outline of submissions on sanction filed 22 October 2018.

²⁶ Ibid.

²⁷ Respondent’s outline of submissions on sanction filed 8 October 2018.

remorse demonstrated by Mr Acreman in the disciplinary proceedings ‘and beyond’ are relevant factors.²⁸ The respondent says that when regard is had to the totality of the proven misconduct the sanction of demotion for matter three is not excessive and reflects the seriousness of the conduct committed by Mr Acreman.²⁹ Further, the sanction meets community expectations as to how matters of this nature are to be dealt with by the QPS.

What does the respondent decision-maker say?

- [20] The respondent decision-maker provided reasons for the sanction imposed that Mr Acreman now seeks to set aside on review. The respondent found that Mr Acreman lacked insight when it was made clear to him by Mr Sheldon that he should not be looking at the documents.³⁰ The respondent decision-maker also found that Mr Acreman’s actions in sending the documents to his private email were ‘totally inappropriate knowing full well it related to an internal disciplinary complaint against [him]’.³¹
- [21] In determining sanction, the respondent decision-maker found matter three to be ‘the most serious of disciplinary matters’ and considered the key accountabilities of an Inspector of Police and an ‘essential selection criteria’ for an Inspector.³² The relevant extract from the reasons is as follows:

Key Accountabilities of an Inspector of Police [is] to “maintain a work environment committed to professional standards, ethical practices and discipline”. Further an Essential Selection Criteria is “a standard of personal integrity and professionalism as required by the Commissioner of the Police Service”.³³

- [22] The respondent decision-maker also considered that the protection and confidentiality of disciplinary material is the ‘cornerstone of the QPS discipline process and is to be guarded especially from those whose conduct is in question until they are entitled to the material to prevent any compromise of the process’.³⁴ The respondent decision-maker found that Mr Acreman had access to privileged disciplinary material knowing it related to a complaint against him.³⁵ Further, Mr Acreman read the contents of the information ‘knowing that it related to a complaint’ against him and this is ‘further aggravated’ by the fact that Mr Acreman emailed the information to his private email account.³⁶ The respondent decision-maker noted Mr Acreman’s ‘acceptance in hindsight’ that there were better options to secure documents other than emailing them to a personal email account and that he (Mr Acreman) stated that he ‘did so under considerable stress’.³⁷
- [23] The respondent decision-maker accepted that there has already been ‘punitive consequences’ due to Mr Acreman’s actions and that the sanction is not intended to

²⁸ Respondent’s outline of submissions as to sanction filed 8 October 2018.

²⁹ Ibid.

³⁰ Findings and Reasons dated 29 August 2017, p 9.

³¹ Ibid, p 10.

³² Decision on sanction dated 14 December 2017, Exhibit 4, p 113.

³³ Ibid.

³⁴ Ibid, p 114.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid.

cause financial detriment although this may be a consequence to satisfy the purpose of discipline.³⁸ The respondent decision-maker also noted the stress and anxiety suffered by Mr Acreman and his awareness of the serious nature of unauthorised access to official and confidential information.³⁹ The respondent decision-maker considered that demotion is the ‘correct sanction’ and will ‘adequately serve to demonstrate the Service’s disapproval of [the conduct] and to act as a deterrent for other members’.⁴⁰

- [24] The respondent decision-maker considered the comments of Holroyd J in *R v Police Appeals Tribunal*⁴¹ in relation to the high rank of an officer and the standards expected. Holroyd J said:

High rank and long service carry with them responsibilities, which the panel clearly expressed; and the maintenance of public confidence and respect in the police service may mean that a high-ranking officer must suffer a harder fall than would a junior officer in similar circumstances.⁴²

- [25] The respondent decision-maker found that he no longer had ‘confidence’ in Mr Acreman’s ability to fulfil the role of a Commissioned Officer in a manner which maintains public confidence in the QPS. The respondent although ‘mindful’ of the impact a demotion from Inspector to Senior Sergeant will have found that a Commissioned Officer is held in ‘high regard’ and the sanction must ‘reflect the gravity of [the] conduct being contradictory to the expectations of an Inspector’.⁴³ The respondent also considered that it was not appropriate to suspend the sanction in the circumstances; and took the opportunity to ‘warn’ Mr Acreman that should he commit further acts of misconduct or breaches of discipline warranting consideration by a prescribed officer then he should expect ‘dismissal’ as a likely outcome having regard to the conduct.⁴⁴

What is the correct and preferable decision?

- [26] In finding matter three to be substantiated I made relevant findings about Mr Acreman’s conduct. I accepted Mr Acreman’s evidence that he did form an honest and reasonable belief at the time he accessed the folder containing the four documents on the QPS computer system that the four documents were accessible by anyone who had QPS computer system access. Further, I found that at the relevant time that Mr Acreman found the folder containing the four documents on the QPS computer system, the investigation in relation to the complaint made by the complainant had been finalised and he was waiting for the notice of the disciplinary proceedings.⁴⁵
- [27] I did not accept, however, that it was reasonable for Mr Acreman to form the belief that confidentiality of the four documents had been waived at the time of access by him and the emailing.⁴⁶ I did not accept Mr Acreman’s submission that because of

³⁸ Decision on sanction dated 14 December 2017, Exhibit 4, p 114.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ [2016] EWCH 2708 at [71].

⁴² Ibid.

⁴³ Decision on sanction dated 14 December 2017, Exhibit 4, p 115.

⁴⁴ Ibid, p 117.

⁴⁵ Reasons, [42].

⁴⁶ Ibid, [42].

the honest and reasonable belief held by him that the document or information is no longer confidential. I observed that there was no evidence before me that Mr Acreman made any enquiries about the documents that clearly related to the complaint concerning himself personally and an off-duty incident, before reading the documents contained within the QPS system that were at all times confidential documents notwithstanding his concerns that other people within the QPS may have access to them.⁴⁷

- [28] Mr Acreman's conduct needs to be considered in the context of the findings made by the Tribunal in determining that matter three is substantiated. Mr Acreman's conduct is serious but I do not consider the conduct to be 'the most serious of disciplinary matters' as found by the respondent decision-maker. The Tribunal must ultimately reach its own conclusion as to the correct and preferable sanction to be imposed. Here, the conduct took place in circumstances where the investigation concerning Mr Acreman and the complaint had been finalised and Mr Acreman believed the documents were accessible by anyone who had QPS computer system access. Although the documents were, as found by me, not related to the performance of Mr Acreman's official duties as a police officer and the information was 'afforded protection by QPS internal policy and the law',⁴⁸ the information did relate to Mr Acreman personally and the complaint made about an off-duty incident that Mr Acreman believed had been finalised by the QPS. The letter sent by the CCC to Mr Acreman on 10 November 2015 states that the investigation into the allegations has been completed.⁴⁹ This is a compelling feature of Mr Acreman's conduct and is one of many matters that I must consider in determining the appropriate sanction.
- [29] I agree with the respondent decision-maker that Mr Acreman has shown a lack of insight into his conduct when he told Mr Sheldon that he had found the information and he was told (by Mr Sheldon) that he 'shouldn't be looking at the information' and Mr Acreman said in response, as stated by Mr Sheldon, 'Bullshit, you can't expect me to not look at them...'.⁵⁰ I do not accept, however, as found by the respondent decision-maker that the evidence demonstrates a lack of remorse by Mr Acreman. I found that Mr Sheldon's evidence supported Mr Acreman's evidence about his belief that the documents could be accessed by anyone in the QPS.⁵¹ The evidence given by Mr Sheldon relevant to Mr Acreman's conduct also supports Mr Acreman's evidence that he was looking for his personal documents on the file server and could not find them and saw a 2015 folder with the complainant's name. Mr Sheldon's evidence is that Mr Acreman said, amongst other things, that the documents 'are about me and have an enormous impact upon my career'.⁵² Mr Acreman's evidence given during the QPS interview was that the documents were 'clearly advantageous to [his] defence in that they provided a different version of events to what [he] had been accused'.⁵³ Further, the relevant conduct giving rise to matter three arises out of an isolated incident in that Mr Acreman having seen the folders on the QPS computer, opened the folders and then made a decision to secure

⁴⁷ Reasons, [53].

⁴⁸ Ibid, [51].

⁴⁹ Ibid, [42].

⁵⁰ Decision on sanction dated 14 December 2017, Exhibit 4, p 114.

⁵¹ Reasons, [48].

⁵² Ibid.

⁵³ Ibid, [48].

them because he held the belief that the documents were ‘unsecure and available for anyone to read’.⁵⁴

- [30] I find that Mr Acreman has demonstrated insight and remorse for his conduct since the disciplinary proceedings. In his affidavit filed in the review proceedings, that I accept, Mr Acreman states that his actions were undertaken in a ‘very short period of time’ while at his desk in circumstances where he was not ‘seeking information about [his] investigation’ and that he came across the documents ‘by accident’.⁵⁵ Mr Acreman states that his conduct was an ‘isolated incident’ and one that will not be repeated. Mr Acreman states that there was no ‘benefit or advantage’ to finding the document other than that the documents should have been included in the investigation.⁵⁶ Mr Acreman states that there was no ‘obstruction or hindrance’ to the investigation which had already been finalised including the ‘completion of the investigation report that resulted in the termination of [his] secondment to the [CCC]’.⁵⁷ Further, Mr Acreman states that he was under ‘stress’ at the time of finding the documents. Mr Acreman states as follows:

This is a very personal statement that has no regard to the stress I was under at the time of finding the documents and my realisation that the ESC were either wilfully or negligently withholding evidence that proved by innocence or simply securing the evidence. It also fails to take into account that my reasons for securing the evidence were to ensure that the prescribed officer in the matter would receive all relevant evidence and not just selective evidence.⁵⁸

- [31] I do not accept Mr Acreman’s submission that a reduction to the bottom pay level of Inspector for a period of six months coupled with a requirement to complete within two months of the Tribunal’s order, the professional development training courses, is appropriate in this matter. Although I agree with Mr Acreman’s submission that any demotion should be temporary or for a set period, I do not consider that a reduction in pay level for a period of six months is appropriate here in view of my findings, the totality of the conduct, the purpose of discipline and Mr Acreman’s rank.
- [32] The conduct giving rise to the finding of misconduct for matter three is serious because it involved accessing information that was official and confidential information contained within the QPS system. I accept the observations made by the respondent decision-maker that the QPS must ensure that it is able to safely manage the access of information particularly in relation to disciplinary matters.⁵⁹ Here, Mr Acreman accessed the information without an official purpose related to the performance of his duties as a senior ranking police officer and has without authority taken steps to secure the information by emailing the information to his private email account.
- [33] I accept the respondent’s submission that a demotion to Senior Sergeant pay point 4.1 satisfies the object of maintaining appropriate standards of discipline within the QPS and maintaining confidence of the public in the QPS. I do not accept, however,

⁵⁴ Reasons, [48].

⁵⁵ Exhibit 1, p 41.

⁵⁶ Ibid.

⁵⁷ Ibid, p 42.

⁵⁸ Ibid, p 42.

⁵⁹ Decision on sanction dated 14 December 2017, Exhibit 4, p 114.

the respondent's submission that a permanent demotion in rank to Senior Sergeant pay point 4.1 is the correct and preferable decision.

- [34] There is evidence before me and I accept Mr Acreman's evidence, of the financial consequences of the respondent's sanction that is \$191,913.46 not including the impact on superannuation.⁶⁰ I accept Mr Acreman's submission that the financial consequences of the sanction is significant and disproportionate to the misconduct which occurred.⁶¹ I accept Mr Acreman's submission that clarity as to the financial impact of any sanction imposed is important. However, this is one of a number of matters that I must consider in determining the appropriate sanction.
- [35] I accept the respondent's submission that the sanction needs to reflect the seriousness of the conduct and meet the community expectations as to how matters of this nature are to be dealt with by the QPS.⁶² I also accept the respondent decision-maker's view that the sanction must reflect the QPS's disapproval of the conduct particularly given that the community, as stated by the respondent, 'needs to feel safe knowing the information the Service holds is not accessed inappropriately'.⁶³ Further, I accept that the sanction must satisfy the object of maintaining appropriate standards of discipline within the QPS, maintain public confidence particularly in the context of Mr Acreman's rank, length of service and the position held at the relevant time of the conduct.⁶⁴ I must also consider the totality of the conduct and relevant comparators.
- [36] At the time of the conduct Mr Acreman held a very senior position in the QPS and had a distinguished and unblemished record as a serving police officer. Mr Acreman held a position in the CCC that commenced in 2013 and was rescinded by the QPS as a result of the investigation by the QPS into the allegations.⁶⁵ The fact that Mr Acreman has an unblemished record at the time of the conduct is relevant as is my finding that the conduct is serious.
- [37] Mr Acreman has, following his demotion to Senior Sergeant on 14 December 2017, been working in the QPS under the supervision of a detective superintendent in the Brisbane Region. Mr Acreman's supervisor, Anthony Fleming, deposes to the work completed by Mr Acreman since his demotion in rank. More importantly, Mr Fleming states that he is not aware of any inappropriate behaviour by Mr Acreman and anything that would cause him to limit Mr Acreman's access to QPrime or other appropriate QPS information systems.⁶⁶ I accept Mr Fleming's evidence as to Mr Acreman's good conduct since his demotion in rank following the sanction imposed by the respondent.
- [38] As found by the respondent decision-maker the position of Inspector has 'key accountabilities' and as part of the essential selection criteria, the position of an Inspector requires 'a standard of personal integrity and professionalism as required by the Commissioner of the Police Service'.⁶⁷ I am not satisfied that a permanent

⁶⁰ Exhibit 3.

⁶¹ Respondent's submissions filed 22 October 2018, [39].

⁶² Respondent's submissions filed 22 October 2018, [31].

⁶³ Decision on sanction dated 14 December 2017, Exhibit 4, p 114.

⁶⁴ Ibid, [30].

⁶⁵ Exhibit 4, p 138.

⁶⁶ Affidavit of Anthony Fleming sworn 17 October 2018.

⁶⁷ Decision on sanction dated 14 December 2017, Exhibit 4, p 113.

demotion in rank is the correct and preferable decision having regard to the purpose of discipline, Mr Acreman's good service history, the seriousness of the conduct, the circumstances of the conduct, particularly that Mr Acreman reported his conduct to Mr Sheldon, the fact that Mr Acreman held a belief that the documents were accessible by anyone in the QPS with access and that the QPS investigation about the complaint was finalised. Further, there is evidence before the Tribunal as to Mr Acreman's good conduct since his demotion in rank.

[39] I do not accept the respondent's submission that Mr Acreman has demonstrated a lack of insight or remorse for the disciplinary proceedings and beyond.⁶⁸ Mr Acreman's evidence given during the QPS disciplinary process was that he was concerned that the documents accessed by him were 'vulnerable to being easily deleted without any evidence they had existed or as to what the content of the documents was'.⁶⁹ I accepted Mr Acreman's evidence given about his belief that the documents could be accessed by anyone in the QPS. I found that Mr Acreman's evidence was supported by the evidence given by his supervisor, Mr Sheldon.⁷⁰ Mr Acreman's evidence about why he accessed the documents and emailed them to his private email account is relevant to the conduct and is one of many matters I must consider in determining sanction. Mr Acreman's conduct and more importantly the circumstances surrounding the access of the documents is also relevant when considering relevant comparatives and the sanction imposed for similar conduct.

[40] The respondent submits that *R v Bowen*⁷¹ appears the most appropriate comparator. In *R v Bowen* the subject officer was charged with three offences of official misconduct, namely, disclosing confidential information to a member of the police service under his command that there was a complaint that the member had misappropriated a tool box from a crime scene; falsely denying to an officer of the Criminal Justice Commission that he had made the disclosure; and furnishing a signed witness statement made under the *Oaths Act* to the effect that he had not made the disclosure. The subject officer had an impressive record with 30 years meritorious service in the QPS. The explanation for his conduct was said to be that he was very angry when he was told one of his subordinates was accused of taking the tool box, 'because he felt he had been let down'.⁷² The police officer who held a rank of Inspector was reduced to the rank of sergeant at the first pay point. Demack J made findings about the conduct relevant to the sanction imposed. Demack J held:

When the appellant lied on 3 June 1993, he did something which erodes public confidence in the police service, and which also affects the trust other members of the police service have in each other. He lied to hide his own misdoing. When he was false to his oath on 10 August 1993, he put himself in the situation where his testimony was forever open to challenge. This, in a significant sense, denied the public the use of his services in the active detection of crime. It also erodes public confidence and adds weight to the arguments of those who seek to curtail the powers of the police service. It may destroy the trust other members of the police service should have in him.⁷³

⁶⁸ Respondent's submissions, [30].

⁶⁹ Reasons, [48].

⁷⁰ Ibid, [41].

⁷¹ *R v Bowen* (1995) 2 Qd R 8.

⁷² Ibid, [15].

⁷³ Ibid, [40].

- [41] I do not accept the respondent's submission that *Re Bowen* is an appropriate comparator to this matter.⁷⁴ In *Re Bowen*, the subject officer, disclosed confidential information to another officer about a complaint made against that officer. The subject officer also falsely denied the conduct orally and under oath. The subject officer's conduct had the potential to undermine a criminal and disciplinary investigation and the subject conduct continued over a period of time.
- [42] Here, Mr Acreman accessed the QPS computer to look for his personal folder on the file server and saw a folder with the complainant's name on it. Mr Acreman clicked on the folder and found four documents concerning a complaint that involved himself personally in an off-duty incident.⁷⁵ Mr Acreman read the documents and told his supervisor, Mr Sheldon about the documents. I accept Mr Acreman's submissions that he has, as submitted, 'never been dishonest' and that in reporting to his supervisor, Mr Sheldon, which led to the misconduct charges, Mr Acreman has, as submitted, 'never attempted to conceal his actions'.⁷⁶
- [43] The respondent says that imposition of any sanction less than a demotion to senior sergeant would allow Mr Acreman to retain a substantial rank and position of authority and trust as a commissioned officer within the QPS.⁷⁷ This is one of many matters I must consider in determining the appropriate sanction and more importantly the correct and preferable decision. I have accepted the evidence of Mr Fleming who deposes to Mr Acreman's good conduct since his demotion arising from the disciplinary proceedings. Mr Fleming states that he is 'generally aware of the nature of the allegations and findings leading to [Mr Acreman's] demotion'. Mr Fleming states that he is 'not aware of any inappropriate behaviour by [Mr] Acreman'.⁷⁸ I have also found that Mr Acreman's conduct is serious but not, as found by the respondent decision-maker, 'the most serious of the disciplinary matters'.⁷⁹
- [44] I accept the respondent's submission that the comparative cases helpfully summarised by the Tribunal in *Crime and Corruption Commission v Acting Deputy Commissioner Barron and Anor*⁸⁰ concern conduct by officers who were, as submitted, 'relatively junior' and many of the cases refer to the officers as being 'naive'.⁸¹ I accept that, as observed by the Tribunal in *Barron* that each case will ultimately 'turn on its own facts' because no two cases are identical and there are 'a range of factors which will be relevant'.⁸²
- [45] I do not accept, however, that Mr Acreman has by accessing the information and informing himself engaged in conduct that is similar to the conduct in *Re Bowen*. The respondent says and I accept that if Mr Acreman was to be given a sanction that allowed him, after a period of time, to return to his rank as an Inspector, that he would retain a very senior position within the QPS. In support of the submission made by the respondent that Mr Acreman is no longer fit to retain the rank of an

⁷⁴ Respondent's submissions, [22].

⁷⁵ Reasons, [76].

⁷⁶ Applicant's submissions, [35].

⁷⁷ Respondent's submissions, [24].

⁷⁸ Affidavit of Anthony Fleming sworn 17 October 2018.

⁷⁹ Decision on sanction dated 14 December 2017, Exhibit 4, p 113.

⁸⁰ [2015] QCAT 96.

⁸¹ Respondent's submissions, p 7.

⁸² [2015] QCAT 96, [72].

Inspector, the respondent says, amongst other things, that Mr Acreman has failed to ‘demonstrate any insight or remorse’ for his misconduct.⁸³ I do not accept this submission in light of the findings I have made about the conduct and Mr Acreman’s fresh evidence given in the review proceeding that I have accepted. Consistent with established authority the purpose of discipline is not to punish. I have found that a demotion in rank will have a significant impact on Mr Acreman financially. I have also found that Mr Acreman has demonstrated insight and remorse in relation to his conduct. Further, I have found that Mr Acreman, unlike the subject officer in *Re Bowen*, did not lie about his conduct and accessing the documents on the QPS computer. Here, unlike *Re Bowen*, Mr Acreman reported his actions to his supervisor Mr Sheldon.

- [46] I find that a period of demotion in rank together with internal and external self-funded training to be completed by Mr Acreman to be the correct and preferable decision. A demotion in rank for a set period reflects the serious nature of the conduct and the senior position held by Mr Acreman at the time of the conduct. Training is also appropriate given the findings made about Mr Acreman’s conduct concerning matter three. In particular, Mr Acreman made submissions in the review proceeding about his conduct and the reasons for accessing the information and then emailing the information to his private email account. Mr Acreman maintained and I accepted Mr Acreman’s evidence that when he accessed the folder containing the four documents on the QPS computer system, he (Mr Acreman) thought that the information ‘was accessible by anyone in the QPS’.⁸⁴
- [47] I find that ethical decision making training is necessary in this matter because Mr Acreman has by engaging in the conduct and reading the information and taking steps to secure it, placed his own personal interests above his duties as a senior police officer. Mr Acreman in returning to his senior position within the QPS will have the benefit of training both external and internal about not only keeping information safe but also ethical decision making in the performance of his senior police officer duties.
- [48] I find that both internal and external self-funded ethics training to be completed by Mr Acreman together with an additional sanction is appropriate having considered the purpose of discipline, all of the material, the submissions advanced by both parties and any relevant comparatives. The internal and external training will serve to ameliorate any concerns arising from Mr Acreman’s conduct in respect of accessing information on the QPS computer systems that is afforded protection by relevant QPS policy and the law. In ordering that external ethics training be completed I accept the evidence of Mr Quinn who deposes to the availability of external training through appropriate organisations.⁸⁵ Relevantly, Mr Quinn states, amongst other things, that Griffith University runs an external course for three months in the second trimester of 2019, University of Queensland also offers an external course as a full semester subject in the second semester of 2019. I consider that Mr Acreman may require a period of at least eight months to complete the external training.

⁸³ Respondent’s submissions, p 8.

⁸⁴ Reasons, [40].

⁸⁵ Affidavit of Patrick Michael Quinn sworn 22 October 2018.

- [49] I find that a period of demotion to the rank of Senior Sergeant pay point 4.1 for a period of twelve months is appropriate given the serious nature of the conduct, Mr Acreman's rank and good service history, the fresh evidence, the submissions and the purpose of discipline. The sanction will serve as a deterrence to other officers about the importance of maintaining and keeping safe confidential information held on the QPS computer system. Further, the sanction will meet community expectations and standards expected of a police officer and signify the public disapproval of the conduct. I accept that, by reason of the period of demotion for twelve months, Mr Acreman will suffer financial detriment by reason of the reduction in pay points that will impact on his salary and entitlements. The sanction must, however, reflect the serious nature of the conduct particularly given Mr Acreman's level of rank and long service history.
- [50] As observed in *R v Police Appeals Tribunal*⁸⁶ 'high rank and long service carry with them responsibilities'. Further, although Mr Acreman says he was acting under stress at the time of his conduct and amongst other things the information was relevant to a complaint concerning him personally, Mr Acreman should as a police officer with considerable years' experience have resisted the temptation to look at the information particularly after he was warned by Mr Sheldon. As held by the Queensland Court of Appeal in *Deputy Commissioner Stewart v Dark*⁸⁷ there is an expectation of the QPS and the public that officers will 'resist any such temptation and will continue to behave with due propriety regardless of stress'.⁸⁸ Mr Acreman having found himself in a position of conflict in that he has located information on the QPS computer that is not related to his official duties but rather relevant to a complaint concerning himself, even though he believed the complaint to be finalised and the information accessible by anyone, should have resisted the temptation to look at the information.
3. I order that the respondent's decision of 14 December 2017 in relation to sanction concerning matter three is set aside and the following decision is substituted:
- (e) Mr Acreman is reduced from Inspector pay point 5.6 to Senior Sergeant pay point 4.1 for a period of twelve (12) months from 14 December 2017;
 - (f) At the conclusion of the 12 month period, Mr Acreman shall return to Inspector pay level 5.6;
 - (g) Within two (2) months of the date of this order Mr Acreman must complete the following:
 - (v) Ethics and ethical decision-making online training (QC1022_02_A);
 - (vi) Information Security Online Tutorial (QC0241_03);
 - (vii) Information Classifications Systems Online Training (QC0451_03); and
 - (viii) Professional Practice within the QPS Online Training (QC1022_04).
- [51] Within eight (8) months from the date of this order Mr Acreman must complete external self-funded ethics and governance training through a registered training organisation.

⁸⁶ *R v Police Appeals Tribunal* [2016] EWCH 22708, [7].

⁸⁷ *Deputy Commissioner Stewart v Dark* [2012] QCA 228, [35].

⁸⁸ *Ibid.*